

VERBATIM
R E C O R D

[REDACTED] LtCol/O-5

3d MRB, MRR, USMCF, SOC

USMC

Camp Lejeune, NC

by

BOARD OF INQUIRY

Convened by Commanding General
U.S. Marine Corps Forces Special Operations Command
Camp Lejeune, North Carolina

at

Camp Lejeune, North Carolina
on 23 August 2018

[The board of inquiry was called to order at 0704, 23 August 2018.]

AREC: The Commanding General of U.S. Marine Corps Forces Special Operations Command convened this board by Appointing Order, dated 25 June 2018, and that is modified on 19 July 2018.

The following officers named in this modified appointing order are present:

[REDACTED] as the Senior Member;

[REDACTED] as members.

All officers named in the appointing order are present.

[REDACTED] and [REDACTED] were detailed by the Senior Trial Counsel, Legal Services Support Team, Camp Lejeune, as the recorders for the board and are present. [REDACTED] has been detailed as military defense counsel for [REDACTED] and is present. [REDACTED], civilian defense counsel, is also present. Both the recorders and detailed military defense counsel for the respondent are judge advocates certified under 27(b), UCMJ.

[REDACTED] has been appointed as court reporter and has previously been sworn. The board's legal advisor is [REDACTED]. He is a judge advocate certified under Article 27(b) of the UCMJ. The legal advisor provides such assistance as the board requires, but does not participate in any closed session of the board.

SMBR: The respondent is present. The record will reflect that this board is properly convened and constituted. The purpose of this board is to consider relevant facts in the case of the respondent who has been recommended for discharge from the naval service by reason of:

(A), substandard performance of duty, for: One, failure to demonstrate acceptable qualities and leadership required of an officer in the members grade; and, two, failure to properly discharge the duties expected of the member's grade and experience.

(B), commission of a military or civilian offense which could be punished by confinement of six months or more or any other misconduct which would require specific intent for the conviction, for: One, conduct unbecoming an officer and gentlemen in violation of Article 133; and, two, adultery in violation of Article 134.

I will now advise the respondent of his right to counsel before the board. These were referred [sic] in the notification and acknowledgment of rights.

Does counsel desire that I explain these rights to the respondent at this time?

CC: No, sir.

SMBR: Okay. In addition to your right to counsel, you have many other rights at this board. These are referenced in the notification and acknowledgment of rights.

Does counsel desire that explain the additional rights to the respondent at this time?

CR: No, sir.

SMBR: The purpose of this board is to give the respondent a full and impartial hearing and an opportunity to respond and rebut the allegations, which are a bases for referring this case to a board of inquiry. After hearing evidence from both sides, the board will determine whether the preponderance of evidence proves those allegations. If a preponderance of evidence does not support the allegations, the case will be closed. If the preponderance of the evidence supports the allegations, the board will recommend whether the respondent should be discharged. If the board recommends discharge, it will also recommend the characterization of discharge.

Since a discharge would be at the grade the respondent currently holds, the board will not recommend discharge grade if it recommends discharge. Depending on the board's findings and recommendations, final action on the case may be taken by the Deputy Commandant of Manpower and Reserve Affairs or the Secretary of the Navy. The members are informed that Congress created two separate systems for adjudicating officer misconduct cases. The first system is the judicial system implemented by the Uniform Code of Military Justice with the purpose of -- the purpose of the judicial system is to determine guilt and punishment, and such determinations are made at nonjudicial punishment hearings or courts-martial. The second system is the administrative system, which is implemented by statute and regulation. The purpose of the administrative system is not to punish, but to determine whether an officer's performance or conduct warrants separation from the service; thus, the board of inquiry examines allegations against an officer, and if it instantiates, then recommends whether the officer should be retained

or separated.

The officer's commander reviews each case of officer misconduct and determines the most appropriate means for resolving the allegations against the officer: the judicial system alone, the administrative system alone, or both systems. The judicial and administrative systems may work independently. For example, a board of inquiry may be held without an officer receiving nonjudicial punishment. On the other hand, an officer may receive nonjudicial punishment, but never have the case referred to a board of inquiry. Likewise, the systems may work together. For example, an officer may receive nonjudicial punishment and then have his case referred to a board of inquiry.

Referring an officer's case to a board of inquiry after the officer's case has been to a courts-martial -- court-martial or to a nonjudicial punishment hearing is not double jeopardy. According to this board of inquiry functions as a -- accordingly, this board of inquiry functions as an administrative rather than judicial body. The rules of evidence applicable in courts-martial do not apply at this hearing; however, Article 31(b), UCMJ, does apply. No military member may be compelled to testify or produce evidence that will tend to incriminate that member or to or be required to answer questions not material to issues before the board.

The following will occur during the hearing: Opening statement from counsel, presentation of the government's case, presentation of the respondent's case, rebuttal, closing arguments from counsel, instructions for the members, and deliberation by the members. The members are cautioned not to make any decisions until after hearing all of the evidence, final arguments of counsel, and instructions on deliberations. All board proceedings will be conducted in this room while the board is in session.

This board will consider any matter presented which is relevant to the issues before the board whether written or oral, sworn or unsworn. Real evidence, such as distinguished from testimonial or documentary evidence, may be shown and admitted to the board and should be accurately described or reproduced for the record. The board may refuse to consider any moral or written matter presented if it is irrelevant, not authentic, or unnecessarily repetitive or cumulative; however, evidence will not be excluded merely because it would be inadmissible in a court. If evidence is classified, the provisions of the Department of the Navy information

security regulations will be observed.

The burden of proof is on the government and it never shifts. Board decisions are made by the majority vote based on the preponderance of the evidence, which is the standard of proof. A preponderance, which is the same standard for nonjudicial punishment hearings, is less than beyond a reasonable doubt, which is the standard for court-martial. A preponderance of evidence proves a fact if the greater weight of evidence, i.e., 51 percent or more of the evidence, supports the fact. The weight of the evidence is not determined by the sheer number of witnesses or the volume of evidentiary matter; it is determined by the evidence which best accords with reason and probability. The board members will rely on their individual judgment and experience in determining the weight and credibility to be given to the evidence.

As the senior member, I will rule on all matters of procedure and evidence and on all challenges for cause except for challenges for cause to the senior member or legal advisor; in which case, the convening authority rules on those challenges for cause. Since the procedures used at this hearing may be unfamiliar to the board members, the board members are encouraged to ask questions during the hearing about those proceedings. The hearing will be conducted in an atmosphere of decorum and dignity. Members and witnesses will be treated with respect and protected from questions which exceeds the bounds of the proper examination and propriety or which are intended merely to harass, annoy, or humiliate. Witnesses will be excluded from the hearing until after their testimony is complete.

Does either side desire to question a member or legal advisor on possible grounds for challenge for cause?

AREC: Yes, sir. The government has some questions.

SMBR: Okay.

ADC: Good morning, gentlemen. As I introduced myself, my name is [REDACTED]. I'm one of the government recorders today. The other recorder is [REDACTED]. We've been detailed, as I stated in the board in the script, by the Senior Trial Counsel here at Camp Lejeune.

We are prosecutors by trade; however, for the purpose of this board, we're government recorders. And the distinction's important because our role in this is to ensure that the proceedings are fair and conducted according to the SECNAV Instructions. So as part of

that, we have to ensure that it is an impartial and fair board. And that's the reason I have to ask you some questions now just to make sure there's no biases or any other thing -- anything else that would prevent you from serving on this board.

So, gentlemen, the way I'm going to do it is I'm going to ask a question, and I'm going to start with you, sir, and then, kind of, go down the line. Do any of the members have any knowledge -- prior knowledge of the facts of this case.

That's a negative response from all the members.

Have any of the members heard anything about this case prior to coming aside from the exhibits that were provided by both sides?

That's a negative response from all the members.

Do any of the members have any preconceived notions about what should happen today?

That's a negative response from all the members.

Have any of the members received any direction on how they should vote today?

That's a negative response from all members.

Do any of the members work in the same section as the respondent, [REDACTED]?

That's a negative response from all members.

Do any of the members serve as either the RS or RO for the respondent?

That's a negative response from all members.

Do any of the members write -- serve as the RS or RO for any of the other members on the board?

Negative response from all the members.

Have any of the members have served on either a BOI or an adsep before?

That's an affirmative response from all the members.

Starting with you, sir, can explain whether -- was that a BOI or an adsep?

MBR (): It was a BOI.

AREC: BOI?

MBR (): Mhm.

AREC: And do you remember the results of that BOI?

MBR (): I don't know what the final adjudication was, but it was a similar case.

AREC: Does your experience -- despite your experience with that BOI, do you think in a fair and impartial manner today?

MBR (): Absolutely.

AREC: And, sir, what experience specifically, do you have?

SMBR: I've done quite a few BOIs.

AREC: Yes, sir. Do you remember the results of those BOIs?

SMBR: Not all of them. It's been over a long period of time, but on both -- so they there were times when they were essentially unsubstantiated and the case was closed and other times where it was substantiated.

ADC: Did any of those case involve allegations of adultery?

SMBR: Yes, they did.

AREC: And despite serving on those previous boards, do you believe you can be a fair and impartial member today?

SMBR: I do.

ADC: All right, sir. Can you explain your past experiences with BOI?

MBR (): I've served on two adsep boards.

AREC: And do remember the results of those adseps?

MBR (): I do not.

AREC: And will your experience with an adsep affect your ability to be a fair and impartial member today?

MBR (): No.

ADC: Do you understand -- do all of the members understand the difference between the burden of proof at a BOI

compared with a court-martial? And I could explain further. Do you understand that the burden of proof at a court-martial is beyond a reasonable doubt, and the burden of proof here today is lower, that is, a preponderance of the evidence? Do all of members understand that?

That's an affirmative response from all of the members.

Do all of the members understand that this a purely administrative hearing and not a criminal proceeding?

That's an affirmative response from all the members.

Do all of the members understand that direct evidence of adultery is not required? In other words, the government can meet it's burden of proof today with purely circumstantial evidence. Do all of the members understand that?

That's an affirmative response from all the members.

Do all of the members promise to consider all of the evidence both provided by the government and the defense before making their decision today?

That's an affirmative response from all members.

In the event that separation is warranted, do all of the members agree to strictly follow the guidelines in the SECNAV Instruction recommending characterization of service?

That's an affirmative response from all the members.

Do all of the members understand that your votes today are equal in that the senior member cannot direct each of the other members on how to vote?

Affirmative response from all the members.

Lastly, for any -- are there any reasons that any of you believe that you should not sit on this board today?

That's a negative response from all members.

Thank you, gentlemen. I don't have any more questions for you.

MBR ([REDACTED]): Okay. Thank you.

SMBR: Counsel, would you like to question a member or legal advisor on possible grounds for challenge for cause?

CC: Sure, if I may ask a few questions.

SMBR: Absolutely.

CC: May I enter, sir?

SMBR: Absolutely.

CC: Gentlemen, good morning. So ask it was mentioned, my name is [REDACTED]. Myself, along with [REDACTED], represent [REDACTED] here today. I am a judge advocate by trade. I came into the Marine Corps as a judge advocate. I served until 2008 and, now, I maintain a reserve commission, so I'm qualified and certified in accordance with the UCMJ. I have a military practice out in town. I help service members through situations, adseps, BOIs, and fitness report issues.

So this process, as somebody who was a prosecutor for a number of years here at Camp Lejeune as [REDACTED] said, is designed just to inquire into your backgrounds, not to pry. It's to learn a little bit about your experiences because everybody has unique experiences in life. It's come -- you know, to have a discussion about whether you're the appropriate panel to evaluate the facts and circumstances here and render a decision because it's not your typical BOI. You know, none of them really are. They're all unique. But you've got an 18-year officer here in front of y'all for a decision about future.

So I'm going to follow up [REDACTED] questions first with regards to past experiences with BOIs, and I'm going to scurry back to my checklist because I'm a box guy. All right. So my wife doesn't like it, but it's, kind of, how I get through things in my mind.

So, sir, I'll start with you. You mentioned that you had a couple of BOIs in the past.

MBR ([REDACTED]): One BOI.

CC: But you didn't remember the adjudications. Do you remember what the offense was?

MBR ([REDACTED]): It was adultery.

CC: Okay. The adjudication -- did the board go through? Did you guys make a make a recommendation to the separation authority?

MBR ([REDACTED]): There was a recommendation.

CC: Do you recall what it was, sir?

MBR ([REDACTED]): We recommended separation.

CC: And was this for a -- what rank officer, sir?

MBR ([REDACTED]): He was a LDO?

CC: Okay. All right, so a Captain.

MBR ([REDACTED]): Yes, Captain.

CC: And was this prolonged? What was the fact -- if you recall what the factors were that went into the recommendation, the facts of the case?

MBR ([REDACTED]): The circumstances surrounding the issue was: He was in an adulterous relationship with another Marine's wife in the Marine's same command.

CC: So, you know, the UCMJ is designed to prevent that. It calls into question the senior's objectivity, preference, treatment, and those types of things in instructions. So that all went into your evaluation.

MBR ([REDACTED]): Absolutely.

CC: So, sir, you guys have had a read ahead. And I'm starting with you, sir. I'm going to go down the line. I'm just going to follow [REDACTED] lead here on that. You've had a read ahead. You understand that this does involve an allegation of adultery. You know, the officer's accepted NJP. He stood in front of General Mundy and accepted responsibility for, you know, 134, adultery, and conduct unbecoming. Anything about that experience with the LDO's adultery that would limit your ability to consider [REDACTED] rehabilitative potential and future service?

MBR ([REDACTED]): Absolutely not. I would be impartial.

CC: And you'd hear from the witnesses that support his retention and consider the character -- I think we've got about 25 character statements -- and evaluate whether he's able to continue despite the NJP?

MBR ([REDACTED]): Yes.

CC: Sir, you've had several as you mentioned; a couple involved adultery.

SMBR: Yes.

CC: You've had a read ahead very similar to the questions that I asked the colonel. Anything about your past experiences with cases involving adultery that would render you -- affect your ability to be fair and impartial in considering [REDACTED] --

SMBR: No.

CC: -- future service?

SMBR: No. I think can be impartial.

CC: Can you evaluate, you know, the strength of the witnesses that support his retention and the character statements?

SMBR: Absolutely.

CC: Thank you, sir.

Sir, you mentioned a couple of adseps in the past. You said you didn't really remember the allegations. So, you know, you had a read ahead though with regards to the nature and circumstances here. Anything in evaluating, you know, the command investigation, you know, this -- the information that was provided by the government related to the nature of the NJP that would limit your ability to be fair and impartial in considering [REDACTED] rehabilitative potential?

MBR ([REDACTED]): No.

CC: Gentlemen, collectively, you know, you're going to hear a lot of information about this case here today. He asked a question related to equal voice and whether you're RS and RO types of situations. I know you have different billets, school houses, and different commands right now, but do any of you know each other from your experiences in the Marine Corps?

MBR ([REDACTED]): Just at MARSOC. I checked in recently, so with these two gentlemen.

CC: All right. So if you -- just in terms of professional relationships amongst the command and the command deck, standing in front of General Eu [ph] and General Mundy at meeting and whatnot. Okay. Again, I'm dated in my recollection. I'm a 4402. I spent about a year with 1/8, but, you know, I'd go ask the judge during a battalion workup on our deployment and I'd brief. You know, I'd brief what was going on with the detention facilities, what was going on with the Iraqi police

stations, to [REDACTED] [ph], who was my battalion commander. I came to know the 3 very well and the 2 very well because we were the guys that went to the CO. So anything about your interactions -- and, again, I'm using my own experiences --

MBR [REDACTED]: Yeah.

CC: -- you know, that would render you --

MBR ([REDACTED]): Right.

CC: Go ahead, sir.

MBR [REDACTED]: Yeah. No. I -- probably [REDACTED] and I know each other from Iraq briefly. Our battalions did a RIP back in 2004. That's about it. That's the extent of the relationship.

CC: 2004, were you OpsOs or --

MBR [REDACTED]: Company commander.

CC: Okay.

MBR [REDACTED]: [REDACTED] was a --

MBR ([REDACTED]): I was a major and an OpsO.

MBR ([REDACTED]): -- OpsO.

CC: Got it. So just the RIP to --

MBR ([REDACTED]): Right.

CC: So anything it in addition to that, sir, with regards to this familiarity with each other?

MBR ([REDACTED]): No.

CC: Sir?

SMBR: I just met [REDACTED].

CC: Yes, sir.

SMBR: And I didn't know [REDACTED] until I got here a year ago. And he's an MSC and I'm at the component, so we don't -- we know each other, but we're getting to know each other.

CC: Understood, sir. So, gentlemen, you know, again, this is kind of dovetailed off of [REDACTED]

question. When you go back there, y'all have any -- when you go into your deliberations, whether it's here or wherever, the point is that you all will have an equal voice, and you all agree and understand that you're able to inject as you see appropriate, engage in a full and robust discussion, regardless of seniority?

SMBR: Yes.

MBR (): Yes.

MBR (): [Nonverbal response.]

CC: Thank you, gentlemen.

If I may just have a moment, sir.

SMBR: Yes.

CC: So the -- generally, you know, the Marine Corps as you all are familiar, you know, has mentors, mentees, counselings, 6105s, you know, rudder guidance, you know, and ability to consider rehabilitative potential. Do y'all generally agree with that concept that people can learn from mistakes?

SMBR: Yes.

MBR (): Yes.

MBR (): Yes.

CC: And the Marine Corps as an institution, you know, where no one's -- there's not a zero-defect mentality. Do y'all generally agree with that standard as well?

SMBR: Yes.

MBR (): Yes.

CC: Hold folks accountable, but ultimately, look at the future value that someone may possess with regards to future service. Do you agree with that?

SMBR: Yes, I do.

MBR (): [Nonverbal response.]

CC: And, sir?

MBR (): Yes.

CC: Gotta get that all on the record. I apologize. The

lance corporal, he's going to kill me. I talk too fast to begin with. He hates me. I'm from Massachusetts originally, you know. Anybody else from the Northeast? No? Just me?

SMBR: Philadelphia.

CC: I hope you're not an Eagles fan.

SMBR: I am.

CC: Wonderful. That's fantastic. That's great. So we've got lots to talk about. So, again, gentlemen, this is about evaluating the officer, you know, misconduct you've seen. The misconduct you've seen. You've read through it. You know, what I ask that you do consider is the rehabilitative potential.

You know, we're not going to fight over basics. We're not going to go up here and say that nothing else happened, that there was no relationship with J. C., that there was no allegation of adultery. Lieutenant Colonel, you know, he's accepted responsibility for those actions. So, you know, I just ask that you consider everything: the witnesses, the strength of the witnesses, his 18 years of fitness reports, his awards and accomplishments, the sacrifices he's made throughout his time in the Marine Corps, and look to whether there's value that he still possesses. So we just ask that you be fair and impartial in evaluating rehabilitative potential. Now, does anyone have reservations in doing that?

MBR ([REDACTED]): No.

SMBR: No.

MBR ([REDACTED]): No.

SMBR: Gentlemen, thank you. I don't have any additional questions.

SMBR: Okay. So for the record, there are no challenges for any of the government or the respondent?

REC: Correct, sir.

SMBR: Okay. No challenges?

REC: That's correct, sir.

SMBR: Okay. Are both sides ready to proceed?

REC: The recorder is ready, sir.

SMBR: Okay.

CC: Yes, sir.

SMBR: Does either side have any motions?

REC: The government does not, sir.

CR: No motions, sir.

SMBR: Okay. The recorder may proceed with opening statement.

AREC: Good morning, gentlemen.

SMBR: Good morning.

MBR ([REDACTED]): Good morning.

AREC: Today you're going to face an easy decision and then several difficult decisions. And I'm not going to stand in front of you today as a lieutenant and tell you how you should or should not vote. That's not my place. My responsibility is to present the facts to you so that you can make an informed decision. And you've already had an opportunity to review the government's exhibits. So I'd like to direct your attention to the findings worksheet. I provided each member with a copy.

Now, first, I want to focus on the bottom part of the first page, and that is whether or not the respondent has committed acts of misconduct, moral and professional dereliction by commission of a military or civilian offense and as you can see below there's conduct unbecoming an officer and a gentleman as well as adultery in violation of Article 134. That's the easy decision that I was referring to, gentleman.

As you see in the government exhibits, the respondent has already pled guilty at nonjudicial punishment to violating Article 133, conduct unbecoming of an officer and gentleman, and to adultery. In our system, a guilty plea is the strongest form of proof we have. In every single guilty plea in a court-martial we have, a judge tells that to the accused. Guilty plea is the strongest form of proof that we have, and we have that in this case. The standard of proof at an NJP is the same as at a board of inquiry. The respondent has already said that he is guilty of Article 133 and 134. So, gentlemen, that decision is easy for you today.

And you don't just have to take the respondent's guilty

pleas. You can also consider the evidence: the e-mails that were exchanged between the respondent and Ms. Day that clearly established that he had an intimate relationship with her while he was married to his wife, [REDACTED]. That decision is easy. The other decisions are difficult. The other decisions you'll have to make, as you can see in the top of the findings worksheet, is whether he has demonstrated substandard performance of duty, and then, ultimately, you'll have to decide whether or not the basis is met whether or not he should be retained. And, again, I'm not going to tell you which way to vote. As a two-year lieutenant, I can't tell you how to do that, but I can give you the facts.

What I direct your attention to, gentlemen, is in Government Exhibit 3, the endorsement of the command investigation. General Mundy, who has a lot more credibility than I do as a lieutenant -- General Mundy said that the respondent engaged in a course of conduct that significantly departs from that expected of Marine officers. And that's not exactly the language that you'll find in substandard performance of duty, but it's close and those are the general's words. Then, gentlemen, when deciding whether or not to ultimately retain or separate, just consider the scope of this misconduct, the length of time that it continued on.

Ms. Day unfortunately did not want to provide a statement or did not what to appear today to testify for the government; however, you can review what she wrote to the investigating officer, the IG department at MARSOC. She said that they had an intimate relationship since 2011. For over six years, the respondent lied to her, misled her, and ultimately proposes marriage to her all while he was engaged -- I'm sorry. All while he was married to another woman, all while he had another child with another woman. He continued to mislead Ms. Day.

Think about the impact that that has had on her life and how she and her family now view the Marine Corps. And, gentlemen, you have the responsibility here today to protect the integrity of what it means to be a Marine officer. And that's why your decision is not an easy one because you have to weigh that with the other facts, the facts that the respondent has had a solid military career, 18 years, positive FITREPS, numerous combat deployments, awards, and you have to balance that with the other bad facts. Again, I'm not going to tell you how to vote, but use your experience and common sense in reaching the right decision because you have to protect the title of Marine and title of Marine officer.

Thank you, gentlemen.

SMBR: The counsel for the respondent may proceed with opening statement or may wait until after the recorder has presented the government's case.

When does counsel for the respondent decide to give an opening statement?

CC: I'll give it now, sir.

SMBR: Okay. Please do.

CC: May I enter, sir?

SMBR: Yes, sir.

CC: Gentlemen, the government counsel just got up here and explained to you about the NJP being the strongest proof of evidence in our system or a pleading of guilty being the strongest proof of evidence in our military justice system. Absolutely. [REDACTED] voluntarily agreed to accept responsibility for his actions in front of General Mundy despite being selected for command -- screened and selected for a battalion within MARSOC. He understood the consequences of decision. He understood the consequences of his actions. So yes, absolutely. A plea of guilty is a strong proof of evidence in our case, and [REDACTED] voluntarily agreed to accept responsibility for his actions at NJP.

So we are not, as I told you during the voir dire process, we're not going to come up here and talk about that this did or didn't happen with Ms. Day or that it didn't happen with his wife. It did. And this officer is an 18 -- just under 19-year officer in the United States Marine Corps -- knew what he was doing when he committed the allegations, and he accepted responsibility for them in front of General Mundy. That's what this hearing is designed for at this point. You know, this is not -- as you've seen, sir, in your past, sometimes, you can test the basis at a BOI.

You have to determine as a board whether it's substantiated or not. You know, did it meet the preponderance of the evidence? Did he commit the commission of the offense that he's been notified of? Here, that has been stipulated to. You know, that has been stipulated to, so it's about rehabilitative potential. It's about future service. The government concedes. You know, this is a highly decorated officer with multiple combat deployments.

I mean, you're going to learn about his progression from a communications officer to being selected as a newly promoted major to being the executive officer of MARSOC Battalion, and that his progression as an XO led to his time as an OpsO and being hand-selected by many of the folks you're going to hear from here today, you know, some very well-established senior officers within the United States and the special forces community. This is a young officer that they saw a promise in his professional capabilities and capacities despite not having come through -- I know the MOS did not exist until 2011 -- the typical flow and pipeline for a MARSOC commanding officer, and he was screened and selected for such. And he knew that and he was selected for that and he has lost that as a result of the consequences of his decision with regards to his relationships in his personal life.

He has made some mistakes in his personal life and you're going to hear about those, but you're going to learn about him and his potential for future service throughout the duration of his time in the United States Marine Corps starting with his enlistment as an enlisted Marine while in college. He wanted to see that side of it in the reserve capacity. You're going to hear from Sergeant Major, who was his recruiter, you know, out of Hartwick College who enlisted him in the Marine Corps. He's going to come in and speak to the mentor/mentee relationship, the pride that he had, the work ethic that he still possesses. And that's what's important.

Can he still work to accomplish -- I learned a term from [REDACTED]: "operational lethality." And I may be mispronouncing it, but, you know, he does, and these folks are going to come in and say he has a valuable skill for the 2030 agenda and things that I've learned about with regards to your community. And that's what y'all are here to do. Evaluate him as a member of your community and his future service with his experiences and what value he can give. And that's all we're asking you to do.

Consider the testimony of these witnesses, you know, consider what you're going to read about him in his fitness reports and his awards and, you know, some things that he cannot talk about and won't get into with regards to -- but you can read through his fitness reports for the time he was out at Bragg and look at whether there is value despite his lapse in judgment. But you're going to learn about the relationship too. You know, you've seen some statements from the NJP, and you've seen some statements from some individuals that he confided in his mentors. This decision wasn't made

in a vacuum.

Everybody has issues with their personal life and sometimes those issues spiral a bit out of control. And this did in this circumstance with [REDACTED] and he acknowledges that, but when you take a look at some of the facts and circumstances surrounding their relationship and the operational tempo he was going through -- he's not making excuses. We just ask that you consider his decisions weren't made in a vacuum. You know, this was not a situation where he was involved with a junior Marine within his chain of command. There are some things that mitigate the circumstances surrounding his allegations that we ask you to consider in addition to his rehabilitative potential. Not as excuses, but just as life circumstances.

You know, I'm in my 40s, you know, [REDACTED] is, as well as [REDACTED]. You know, things just happened, you know, in his life that, unfortunately, he didn't take the right steps to address. You know, his wife, despite his consistent pleas to get her to relocate from Richmond, Virginia, to spend time with him as he went through his Marine Corps career, refused to do so. You know, you're going to learn that him and [REDACTED] -- they never lived in the same house not once -- not during the entire span of their relationship. That, you know -- that lack of companionship and his cycles of operational tempo going up, down, back preparing as an OpsO, I can't imagine it. I can only -- I've only seen it at the battalion level. I can't imagine what goes into a regimental OpsO in MARSOC's time in a workup -- in a pre-deployment workup and the stress that he was going through and then not having someone to come back and decompress with except on the telephone maybe if she wasn't on the news.

And again, gentlemen, he's put the Marine Corps first for 19 years -- just under 19 years, and, unfortunately, he got emotionally connected with Ms. Day. He acknowledges that. Does he wish he could go back and change how he handled that circumstance? Absolutely. You're going to hear all of that. But he can't. He can only ask for forgiveness moving forward as he has done so by accepting office hours in front of General Mundy, giving up command selection for a battalion in which he had worked so hard and these folks had helped him to obtain. And ultimately, understanding that, you know, his next rank is probably unobtainable. You know, you can read through [REDACTED] statements and many of other statements from [REDACTED] and some of these folks. You know, they understand that. You know, we're

not naive to the fact that this is a blemish on his record. But isn't that punishment enough, you know, to give up command, to lose the opportunity to continue to progress, to accept office hours. And, gentlemen, he's not at retirement eligibility. There was no portion of the script that [REDACTED] read that focused on a grade determination with regards to retirement. He's just under 19 years. And separation here and we've given you a calculation. You'll hear about his sacrifices and what he's done, but, I mean, if he's unable to obtain the 20-year mark, it's a substantial financial loss to him and his family and his young daughter. And he's been held accountable at NJP, but we just ask that you consider some of those things. Consider the evidence. And most importantly, you know, not our arguments, not -- you know, again, I'm in the same position as [REDACTED], right. I know what I've learned through, you know, getting to know [REDACTED], talking to some very engaging witnesses in [REDACTED] and [REDACTED] and [REDACTED], and Sergeant Major. You know, these are the folks that have -- either -- are deeply entrenched in y'all's community. The 25 character statements that give you everybody from an NCIS agent who's sole purpose is to investigate federal crimes and hold Marines accountable, who vouches for his character despite the lapse in judgment to very senior colonels, who come in and say, "I got it. You know he committed adultery. This is a good Marine officer who made a bad decision in his personal life, but I would still want him standing next to me moving forward."

You know, and that's what it's about, gentlemen. You know, evaluating the credibility. And the government has said that this decision is difficult whether giving you nothing except quoting General Mundy in standard language. You all have put together command investigation endorsements. That language he read is pretty standard, you know, within a letter of reprimand or an endorsement on a command investigation. We're going to make it easier for you to retain him in the Marine Corps by giving you that institutional knowledge, so as folks with, you know, decades of experience in the Marine Corps who elaborate on why not, just standard language that he's committed substandard performance. He know's that. He's been held accountable in front of general officer as a lieutenant colonel in the United States Marine Corps.

It's about your evaluation of him, of his witnesses, of his record book, of the statements that have been provided to you, and that's what we have given to you to

make that decision easier for retention. So -- and that's what we're going to come back with after you hear everything, gentlemen. We're going to come back up here in conclusion -- in our closing remarks and ask that you retain him. We understand. He pled guilty. It is a decision and he made it and he accepted responsibility. We're not contesting the allegations. You know, we're pleading for his ability to continue to serve. So that's what we're going to come back and ask for is retention, gentlemen. Thank you.

SMBR: Unless either side objects, the board will receive each sides exhibits now so that the members can review them before hearing testimony. Any exhibits received or reviewed now are merely to assist the board in understanding the case and possibly asking more informed questions when appropriate. The board remains cautioned to not decide any issues before this board.

Does either side object to these procedures?

AREC: The government does not object, sir.

CC: No objection.

SMBR: Okay.

AREC: Gentlemen, I've already handed you a copy of the government's exhibits, and it was prepared -- it was previously provided to you via AMRDEC on Monday. In addition to the exhibits I've already provided you, I'm also handing you what will now be Government Exhibit 13. And, gentlemen, I'll now read into the record the 13 government exhibits, which include the one's that have been previously provided as well as a copy of the exhibit I just provided you.

Government Exhibit 1 is the BOI notification, dated 7 June 2018;

Government Exhibit 2 is the BOI appointing order, dated 25 June 2018;

Government Exhibit 3 is the command investigation, which includes all of the enclosures;

Government Exhibit 4 is a report of NJP, dated 21 May 2018;

Government Exhibit 5 is the NJP transcript;

Government Exhibit 6 is a punitive letter of reprimand;

Government Exhibit 7 is a NJP notification, dated 5 April 2018;

Government Exhibit 8 is acknowledgment of NJP appellate rights;

Government Exhibit 9 is a PTSD TBI screening;

Government Exhibit 10 is acknowledgments of advanced education assistance and receipt of NJP report;

Government Exhibit 11 is an officer qualification record;

Government Exhibit 12 is Article 133, conduct unbecoming an officer or gentlemen;

And I misspoke earlier. Government Exhibit 13 is Article 134, and what I've handed you, gentlemen, is Government Exhibit 14. I apologize for the misstatement. Government Exhibit 14 is the respondent's response to his notification of NJP.

SMBR: Does the respondent object to any of these exhibits?

CC: No objection, sir. Just one point of clarification: The statement from the NJP references a bigamy charge. That was never adjudicated. It was not a part of the NJP transcript, and you can see through the notification documents that the notification was for two offense: adultery and 134 [sic]. So he does make reference of that in the letter, and only because it was something that was investigated as you read, but ultimately unsubstantiated.

SMBR: Noted.

CC: Thank you, sir. No objections though, sir.

SMBR: Okay. Thank you.

All government exhibits are admitted.

Does the respondent have any exhibits?

CC: Yes, sir.

Gentlemen, as previously provided in the read ahead, I'm going to do the same as the lieutenant: read them into the record. Then I've got hard copies up here. I'll walk up and present it to you.

So Respondent Exhibit A is his OMPF;

B is medical documents, which now include a statement from [REDACTED] that is his treating psychologist at MARSOC. He just amplifies on the MARADMIN screening that was in the government's exhibits;

C is the retirement calculation;

D is just a series of, I guess, a tutorial on the effects of a discharge, which you all are familiar with. But it just gives you some VA source documents on characterization of service;

E is a series of 23 character statements.

So those are the exhibits, gentlemen, that we would present to you with the addition from the read ahead of [REDACTED] statements.

So, sir, may I approach?

SMBR: Yes. Thank you.

CC: You bet. And then there's also biographies for the character witnesses that are coming in to speak on his behalf. That's the last half.

SMBR: Is that all?

CC: Yes, sir.

SMBR: Okay.

Does the recorder have any objections to these exhibits?

AREC: No, sir.

SMBR: All respondent's exhibits have been admitted. The board will recess to review these documents.

Will the recorder, please, state the time.

AREC: Yes, sir. It's 0746 on 23 August 2018.

SMBR: Okay.

[The board of inquiry recessed at 0746, 23 August 2018.]

[The board of inquiry was called to order at 1005, 23 August 2018.]

SMBR: The board will come to order. The recorder will note the time.

AREC: It is 1005 on 23 August 2018.

SMBR: All persons who were present when the board recessed are again present. The recorder may present the government's case.

REC: Sir, the government has nothing further to add at this time.

SMBR: Okay. Does the respondent have any witnesses?

CC: We do, sir.

SMBR: Okay. Did I miss something there?

REC: No, sir.

SMBR: Okay. Yeah.

CC: I think it was just a regurgitation of him understanding his rights, and that he --

SMBR: Right.

CC: -- has the opportunity to present witnesses.

SMBR: Yeah. It's all about witnesses there. Okay.

CC: Yes, sir.

SMBR: Okay. You can call your witness.

CC: Yes, sir. If I may just depart the courtroom to get [REDACTED], sir?

SMBR: Yes, sir. Absolutely.

CC: Thank you, sir.

AREC: I can get him, sir.

SMBR: And, a, does the government swear in the witnesses?

REC: Yes, sir.

SMBR: Okay. All right. I figured yes, but -- all right. I'm going to -- I'm looking at the order of questioning here, so can just follow that.

[REDACTED], U.S. Marine Corps, was called as a witness for the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the recorder:

Q. Sir, if you could please state your full name and spell your last name.

A. [REDACTED]

Q. And where are you currently assigned, sir?

A. I'm the executive officer for the Marine Raider Regiment at Marsoc.

REC: Thank you.

CC: Sir, may I enter?

SMBR: Absolutely.

CC: Thank you.

Questions by the civilian counsel for the respondent:

Q. Sir, good morning.

A. Good morning.

Q. Please, if you could start. The board members do have your biography, but if you could tell them a little bit about your background in the Marine Corps.

A. Yeah. I came in in 1996. I'm originally from Maine. I went to the University of New Hampshire. I came in and was an infantry officer, 3d Battalion, 5th Marines, and then went over to the reconnaissance community, 5th Force Recon, which merged into 3d Recon. Following there, I went to 1st Recon Battalion. After that, I went to the amphibious reconnaissance school. I took selection for MARSOC. I came to MARSOC, was a company commander there, went to Leavenworth to school. From Leavenworth, to Headquarters SOCOM. From SOCOM, I went back to 2d Marine Division at 2d Recon Battalion. I was lucky enough to have that for almost three years. I was a fellow for TLS upstate last year, and I just checked in back to MARSOC at their regiment in just.

Q. Sir, do you know [REDACTED]?

A. I do.

Q. When did you first come to meet [REDACTED]

A. 2007.

Q. All right. Can you please tell the board members a little bit about your interaction with him.

A. Sure. When I checked in to, at the time, 2d MSOB, [REDACTED] was the assistant communications officer. And MARSOC was new at the time certainly struggling. There was a whole lot of gear moving around and coming in. The communications officer at the battalion at the time, in all honesty, was completely incompetent. I think he was finally removed, so [REDACTED] was the go-to guy in communications to make sure everything was right. And my interactions with him professionally were nothing but top-notch.

Q. And in those interactions, you know, were you able to form an opinion. You mentioned "top-notch." Was he good at his duties?

A. Absolutely. He was an outstanding communications officer.

Q. And how did your relationship progress over time?

A. Personally, we became friends. I didn't know him before MARSOC at all. We became friends, not close friends, but certainly, associates. We deployed together on the first iteration SOTF 82, and [REDACTED] was the communications officer at that point in time. He had been promoted to major. The executive officer, [REDACTED], relieved him for cause and sent him home, and [REDACTED] fleeted up to be the executive officer for the SOTF while I was downrange as a MSOC commander.

Q. And to your knowledge, how was he in the performance as a newly-admitted major as the executive officer coming from a combat ground for [REDACTED]?

A. He was great because he was willing to say what he knew and what he didn't know, so he didn't have the air of, "Hey. I'm the XO and this is what's going to happen." Frequently, I found him in his 20-foot container, which is was his office, head-down at two o'clock in the morning trying to dig stuff out because that was a fast-moving SOTF. Colonel drives his people extremely hard, very demanding. It was split between three different provinces. We were missing a couple million dollars worth of gear when he took the account, and he had to fix all that.

And I do believe his efforts kept that thing together as much as it could because [REDACTED] wasn't around where I was very often around the SOTF headquarters. He was frequently traveling and doing his duties as a commander. So [REDACTED] and now-[REDACTED], they basically ran that entire SOTF out of Iraq.

Q. And we're roughly around to the 2012 timeframe here?

A. We came back from deployment. I got out of there in December, I think, 2010. [REDACTED] and I kept in touch. I went to school and I went to SOCOM. [REDACTED] subsequently went to JSOC, and I used to see him probably every six weeks. He used to travel down to SOCOM with his duties in the J6 there.

Q. And have you remained in contact or been in contact with him since your return?

A. Yes.

Q. And overall, what is his reputation as a professional MARSOC Marine and officer?

A. [REDACTED] a -- I'm aware of the charges. I am aware what he pled to. His reputation as an officer and being able to do his job is outstanding. It's top-notch. I'm dealing with him now with some of the new missions we're getting into, which I know you gentlemen are certainly familiar with. I'm not going to speak about them in the courtroom. He's the pointman for MARSOC in coordinating that.

Q. And is he -- does he possess value in maintaining his ability to assist in that?

A. Absolutely. I mean, absolutely. Extremely valuable.

Q. Without getting into specifics, I understand the nature of it. But -- so you mentioned you are familiar with the allegations.

A. I am.

Q. And the board understands he was command selected. Can we talk a little bit about how competitive that is within your community?

A. Very competitive. I mean, it's competitive. I never thought I was going to be a battalion commander. Never in a million years. It's a tough board to pass. I've never sat on it. But speaking to my current boss, [REDACTED], who just came off that board, he said it is very competitive, and there's quite a few arguments that go on of who is the better guy.

Q. And overall, your opinion of [REDACTED] military performance?

A. Military performance is outstanding.

Q. The nature of the allegations and your familiarity with them, you mentioned that previously, sir. So you are aware that he went to NJP in front of General Mundy for, specifically, Articles 133 and 134 for a long relationship he had with Ms. Day while he was married to his spouse?

A. I am.

Q. And, sir, do you believe that [REDACTED] has learned from that experience?

A. Absolutely. Yes. We've had a couple of very long conversations in my office where it's been very uncomfortable for him.

Q. In fact, you know it's hard to talk to your peers, your seniors, folks that have, kind of, groomed you through the Marine Corps -- to admit fault?

A. Yes, sir.

Q. You also mentioned a friendship, sir?

A. Yes.

Q. You know, how would you describe your conversations with him related to his marriage to [REDACTED]?

A. I believe he married [REDACTED] in '08 or '09 and possibly as late as '10. I remember talking to him about that because I had been married a couple of years, and we were laughing because he was the last single guy, major, running around 2d MSOC at the time. So we had talked about it. When he got married, part of the deal -- I remember vividly discussing because I knew she was a newscaster out of Richmond, I believe -- is that she was going to do one or two or possibly three more contracts. And then she was going to get out of that business, and they were going to co-locate together.

When I ran in him in 2012 when I was at SOCOM, he was sitting in the skiff that was overbank. I think that's now gone. He expressed to me that he was very unhappy because what they had agreed upon -- his life refused to give up what she was doing, and so he was essentially a geobachelor. And at that point in time, divorce did come up in what he was going to do, but he told me he was miserable.

Q. And, you know, that continued throughout your relationship and friendship with him?

A. It came up every time we talked, and as he said, sometimes it was okay. Most of the time, he said it was not good.

Q. And, you know, to your knowledge, she never actually -- [REDACTED] never left Richmond, did she?

A. Not that I'm aware of. That was the main source, I believe. The way I understood it -- I've met [REDACTED] before; I've never talked with her -- is that they had an agreement, and they had discussions before they were married. And what he thought he was into or was going to happen is not what happened.

Q. And ultimately, [REDACTED] made some

decisions in his personal life that he's accepted responsibility for by pleading guilty to his adulterous affair with Ms. Day and his failure to disclose to these individuals that he was still in that relationship with [REDACTED]. He's been held accountable. I'm not making excuses for his actions. I'm just providing context. Sir, what is it -- you've taken time out of your duties. You're incredibly busy. You're here today to support

A. [REDACTED]. Why do you believe that he should be afforded the opportunity to continue to serve? I think he's got value to the organization. I'm not going to defend what [REDACTED] did. What he did was wrong and, in many ways, unconscionable to the point where he feels terrible that hurt two people, including himself. What I do know, in this MOS though, it's a closed loop. I think he has great value to what he is doing. I'm the one that writes the slate currently for all of the 0370s, and I give it to deputy commander. He's the one that approves it.

Nobody's going to put [REDACTED] out in front to lead Marines again. They're not going to do it. He's going to have an oar probably in the 5 or someplace else in the 3/5, and he's going to continue to row. If he stays in the Marine Corps, that's what he's going to do. He's not competitive. Everybody knows here he's not competitive for battalion command again. He's not competitive for colonel.

And as a former battalion commander for almost three years, I dealt a lot with military justice, and NJPs are not cookie-cutter things to me. Every case is different, and you have to base it on its merits. And I was careful that the punishment met the crime. And in this case, I look at [REDACTED]. Besides that, I personally like him, professionally, he was board slated for command. He lost that. He got NJP. He lost that. He was on the fast track in the Marine Corps. He lost that too.

At what point in time is enough enough? And it's not lost on me his time in service. And that's not lost on me at all. And it's another reason to keep somebody in the Marine Corps in my opinion. But, you know, you're taking a lot of money on the line for him, his soon-to-be ex-wife, and other things in his time in service. And I think he's got great value to MARSOC.

So, I mean, he paid his price, and I think it's an appropriate price. I mean, he has to deal with the professional embarrassment. I would say half of the 0370s -- at least the field-grades are probably aware of what happened. I walk around the regiment. I don't

think a single -- probably not the company commanders really know. Comm field certainly knows. My CommO knows about it. None of the captains and none of the Marines particularly know about it.

He's just a guy rowing up in the 5 shop doing good work inside of a skip. And I've known Lieutenant General Mundy since he was a lieutenant colonel. I did a deployment with him. For some reason, which I wondered, he trusts him enough to leave him inside of a skiff. He left his clearance, and he's now working probably the most sensitive missions. And he's the pointman for MARSOC. So they trust him professionally. Personally, what he did, that's indefensible and it's wrong.

Q. And despite that lapse in judgment that you've stated, the misconduct that he's been held accountable, he has his clearance. He is performing duties as expected of him in the 5?

A. He was performing before [REDACTED] came in who is now "the 5".

Q. Right.

A. Yeah. He was performing the duties as the 5.

Q. And given that, do you believe -- what's your recommendation as to his future of service to these board members?

A. I think he's got value to the service. I don't think he's going to be put in a position to lead Marines again, nor do I think he should be -- young Marines, a large group of Marines. Looking at my slate, if he stays in, [REDACTED] comes down on 4 October, and looking at the slate, there's not another colonel coming, so he's probably going to be the 5 if he stays in.

Q. Do you trust him to do that?

A. I trust him do his job, absolutely.

Q. And do you recommend that he be retained in the Marine Corps, sir?

A. I recommend in the situation he's in -- with everything that I've read and everything I know, and I believe I know the full story because he tried to make sure I knew it three times -- that, yeah, he should be retained. I don't think [REDACTED] is probably going to want to do 23 years or 24 years. I think he's probably going to want to get to his 20 and exit stage right. But he has maintained rowing every time I walk up into the 5 because guys from the regiment are the one's that are going to support one of the task-forces downrange. He's always there. He always knows exactly what's going on.

He's the one that is the talking head for MARSOC to other units at at Bragg.

Q. And he's trusted to do that?

A. He's trusted to do that, yes.

CC: Thank you, sir. I have no further questions. The government counsel may. The board members may as well, sir.

REC: No questions from the government, sir.

SMBR: Okay.

Do any board members have questions?

MBR ([REDACTED]): I do.

EXAMINATION BY THE BOARD

Questions by the member ([REDACTED]):

Q. You characterized his misconduct as is unconscionable. Can you expand on why you think that?

A. I feel adultery -- as a commander and just personally -- and I'll say this once: I was born and raised a diehard Catholic. Adultery ruins families. It does. I haven't found a lot of adultery that there was a happy ending in ending in and any affairs. It ruins families. It hurts all sides, and, in this case, there's a small child involved. But I've seen it just destroy kids too that are older. So for me, on a personal level, I just -- adultery is -- it's a hot issue for me. I don't think it is acceptable. I'll just leave it at that, sir. It's between that, theft, and drugs when I was a commander which were three of my hot-button issues.

MBR [REDACTED] Thank you.

SMBR: [REDACTED].

MBR [REDACTED]: I have no questions.

REDIRECT EXAMINATION

Questions by the civilian counsel for the respondent:

Q. Sir, so just to follow up on that point though. You know, I was Irish Catholic as well. I understand the values that catholicism preaches, but you're still here to support his retention?

A. I am. I believe he should be retained.

CC: Thank you, sir.

SMBR: Okay. Government, anything?

REC: No questions, sir.

SMBR: Okay. All right.

[The witness was excused and withdrew from the courtroom.]

SMBR: Does counsel have another witness?

CC: We do, sir. I'm just going to check if --

CR: [REDACTED] is back. I just need to go grab him, sir.

SMBR: That's fine.

CR: Thank you, sir.

[REDACTED], U.S. Marine Corps, was called as a witness for the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the assistant recorder:

Q. Sir, can you please state you're full name and rank.

A. [REDACTED]; [REDACTED] is the middle name.

Q. Yes, sir. And how do you spell your last name?

A. [REDACTED]

Q. And what is your current unit and duty station?

A. MARSOC. I work in G-2 operations.

AREC: Thank you, sir.

Questions by the counsel for the respondent:

Q. Good morning, sir. I would like you to briefly describe your military career knowing that the members do have your biography.

A. Sure. I graduated from Villanova in 2001. I came into the Marine Corps from a PLC junior/senior program. I went to TBS after college, and that was May 2001 and went on a ground intelligence track. I got to my first unit in the Okinawa in 2003. That was with 3d FSSG. I deployed to Iraq as an individual augment in '03 into and '04.

I came back and then received orders to 1st Marine Division. I went to 3/5 and we deployed again in roughly '04 and '05. I came back and went to 1st Reconnaissance Battalion where I deployed as part of a MEU dept in the 06'/'07 timeframe. After that, I went to EWS. After EWS, I went to JSOC in Fort Bragg, North Carolina, and then was TDY from there a number of times on small TDY; four months here and for months there in Afghanistan and Iraq.

Following that, I went to the West Coast to serve as intelligence officer for the 13th MEU. And after 13th MEU and their MEU deployment, we went to Command and Staff College. And after graduation from Command and Staff, went to MARSOC first as the Marine Raider Regiment S-2 and then deployed as the CJSOTF J-2 and now as the G-2 operations officer.

Q. Do you expect to -- do you have some follow-on billet that you're going to be going to in the next couple years that you know about?

A. Yeah. I was fortunate enough to be selected for command and will go to Okinawa, Japan, to command 3d Reconnaissance Battalion.

Q. Okay. And that's -- being selected for command is, kind of, an honor, and it's also very, very competitive?

A. I believe so. I'm certainly very humbled to be selected.

Q. Okay. You know, you're here on behalf of [REDACTED], so I'm not going to ask you if you know him. But how do you know him?

A. We first met in 2012 at JSOC, Fort Bragg, North Carolina. It's a joint command, so when I saw another Marine come in, we instantly struck up conversation and had commonalities together. We were only, at our time when we crossed over, at JSOC for about six months or so, but we developed a friendship. And like I said, there's not many Marines there, so it was an easy friendship to strike up.

We didn't see each other after that for five years or so until I got back to MARSOC, but it was nice to see him. Like all Marines, you know, sometimes you'll go 5/10 years without seeing somebody. You see them and you hit the ground where you left off. And that was in 2016 and summer 2016, and we were -- worked very fairly closely from the summer of 2016 all the way up to January of 2018 because we deployed together. So we had daily contact and formed a very tight friendship.

Q. So would you talk to us about [REDACTED]

as a leader and what his character's like.

- A. Sure. He does have a strong command presence. He's quiet, but people know that he's in charge, and they know that he's very competent. He's never, loud or boisterous. That's just not his style, rather, a quite assuredness I would say. But no doubt. Everyone knows that he has -- that he's in command or that he has a situation well in hand. I find it's reassuring to a lot of people that he's, you know, again, not a lot of bluster or talk. Rather, he just gets down to it and wants to get the -- drive home with the mission.

- Q. So what's his work ethic like?

- A. He has a heck of a work ethic. It's a -- we started -- we became close because as I came in as the Marine Raider Regiment S-2, I was trying to get the lay of the land my first time at MARSOC. So my hours were long, and as I was leaving, I was, you know -- I would think I would be the last one in the regiment to shut the lights off, but I would always go past his office, and the lights were always on. So that how we really started to get close.

I'd always pop in his office. "Hey. What're you working on?" You know, and then we'd spend another 30 minutes talking about work, talking about, you know, our deployment -- upcoming deployment and how we can make it better and more efficient. And a lot of times, we would, you know, then go grab a cup of coffee or get a meal or something like that. So that solidified a friendship. I guess the answer to the question is that there were very late nights, and that trend continues even now.

- Q. So talk to us about his job and the op tempo. What's that like? What have you observed?

- A. It's -- I think everybody's pretty familiar with that he was the operations officer for a deploying unit. I know it was a high-profile position -- a high-profile job, and it's a high-profile mission. I mean, the charter was to defeat the conventional capabilities of ISIS, so there was a lot of pressure riding on us. And wanted to -- because, I mean, who doesn't want to eradicate the conventional capabilities of ISIS. We wanted to excel and we put our all into doing it. And I'd say we did excel, and ISIS is no longer a conventional threat in Iraq.

- Q. And [REDACTED] rose to the task? He was there, and he was working hard the entire time?

- A. Yeah. He was the operations officer for a special operations task force and several other task forces below it that engineered a design to ultimately drive

ISIS across northern Iraq and route them back into Syria and to kill them in a lot of places.

Q. Now, you know, we're here for the board of inquiry because it [REDACTED] had a long-term relationship with the woman not his wife. He pled guilty at the commanding general's nonjudicial punishment for Article 133, conduct unbecoming, and adultery, Article 134. And you're familiar with that?

A. I am.

Q. Okay. And you're aware that it was investigated, and it was a long-term relationship. Do you know what his family life was like -- his married life was like?

A. I do. I have some insight. When I met him in 2012 at JSOC, he explained that his wife was working in -- what is it? -- Richmond, and they were separated. And that -- I was newly married, so that, kind of, just struck me as a little odd like, Wow. You can be geographically separated from your wife and continue to, you know -- and move forward and it's a healthy relationship. But it did strike me as a little odd, and, frankly, not healthy. And then when I saw him in 2016, you know, and the same geographic separation was in place, I again was like, "Wow. That must be tough." You know, that must be difficult to be so far away from your wife all the time.

Q. And, now, these allegations, you know, that he pled guilty to, did they change your opinion of what you know about [REDACTED]?

A. I think [REDACTED] would be the first to admit that he made an error, and I second that he made an error in judgment. There's no argument there. As far as his, you know -- my friendship with him and my evaluation of him as a Marine officer in a professional capacity able to do work, it has not changed. He's just as focused as when I worked with him in the Raider Regiment and on this deployment. Again, I -- we all recognize that he made an error. You know, he's admitted this to me. He's basically asked for my forgiveness, and I've given it to him.

Q. So do you believe that he still has value to the Marine Corps?

A. Yes. He shows that value daily. I think a lot of people in [REDACTED] position could have put their head down and went internal -- focus internally. He has done the opposite. In fact, there were several initiatives at our command that he is the anchorman for and they're significant initiatives. Again, I was expecting that maybe he would need to take a break to gather his thoughts, etc., which I think he

has. But he continues to drive forward at work working long hours and being, really, the point man for a lot of initiatives, which are important to the commanding general.

Q. So knowing that he's accepted nonjudicial and pled guilty at NJP, he's lost his slot for command and that he's most likely not going to get selected for colonel. Do you think he should still be allowed to serve and be retained by this court?

A. I do. I think of several vignettes where he's given me some insight onto projects I was working on and helped me. And, also, I'm very impressed with the initiative he's shown on this one project we're working, which is basically the future projection of our force at MARSOC. He's thought of things that -- frankly, I have not -- and how to merge some intelligence analysis into that to it an even more professional product. These were all things that -- you know I'm an intel officer. I feel, frankly, I should have been the one thinking of this, and he's coming to me saying, "Hey. I want to drive this initiative. Let's work this."

Again, pushing the pace and I certainly respect that. I know his coworkers certainly respect that. In other instances, I'm usually going to him when I have questions about how certain RFFs are staffed through component commands and all the way up to, you know, our combatant commands. And he's giving me, and a lot of others, tutelage on how that staffing process works, specifically, when we're trying to get manpower into MARSOC, either to help us at home or ventures abroad.

Q. So you'd be comfortable working with him again in the future if he's retained?

A. I would.

CR: One moment, gentlemen.

That's all the questions I have for you. The recorder may have questions, and the members may have questions, sir. Thank You.

SMBR: Does government have cross?

AREC: No, sir.

SMBR: Okay. Any follow-up?

CR: We're good.

SMBR: Board members?

[REDACTED], do you have any questions?

MBR ([REDACTED]): I just have one follow up.

SMBR: Go ahead.

EXAMINATION BY THE BOARD

Questions by the member [REDACTED]:

Q. [REDACTED], you mentioned that he was separated. Just for clarification, you're talking about geographic separation, right? Was there any indications that he was having some marital problems?

A. Yes, sir. Just geographic separation was my understanding. I had no thoughts that he was separated in a legal status, so it was geographic separation. I had no signs of marital trouble when I first met him in 2012. When we were on deployment, he mentioned that he was going through some marital trouble -- confided in me that he was going -- you know, that things were not looking that great with his relationship. And of course, I was like -- you know, it was no surprise. I go, "You're geographically separated. You have this high, you know, paced" -- "high-tempo job -- "high-stress job. She has the same." It wasn't a surprise to me.

MBR [REDACTED] Okay. Thanks.

EXAMINATION BY THE BOARD

Questions by the senior member:

Q. So I have a question. So you deployed with him on the last deployment?

A. Yes, sir.

Q. And that was the CJSOTF-I?

A. Yes, sir.

Q. And so [REDACTED] was the commander of that?

A. Yes, sir.

Q. Okay. Describe for me what resources were available and, briefly, how the command informed the Marines under the command of the resources available for any kind of mental health type of -- you know, building resilience beforehand or afterward. How was that handled in terms of the command's attitude and then what leaders talked to enlisted about or talked amongst themselves about when it came to that issue?

A. Yes, sir. Well, to start, we had an O-6, Navy captain,

that was our medical officer -- chief medical officer. So [REDACTED] -- I guess I bring that up -- I was uncommon that we would have such a high ranking medical officer deploy with CJSOTF. That's not typical. And I think he did great job broadcasting the medical services available, including mental health -- available at the CJSOTF at the time of our deployment. Now, our medical officer, his forte is not mental health. It's general practice. But, again, he was always broadcasted that he was -- that he could vector someone to the proper experts to get counseling if needed. We also had two chaplains out with us available for mental support, which they regularly put forth and broadcasted.

Q. Okay. So how would you describe -- within the command culture of that unit, what was the attitude toward mental health.

A. Sir, I think everyone would have been understanding if somebody said, "I'm having some mental health issues." We all would've been understanding. But, you know, I think by that time when we deployed, where everyone knew the importance of the mission and mission had priority, the culture was: We need to complete this mission. And everyone knew it. If somebody had to take a knee, everyone would have been understanding, but, again, a large amount of emphasis was on finishing off the conventional capabilities of ISIS. That was the focus. That was it.

Q. But leadership endorsed to subordinate the idea of, "Hey. If you need to take a knee, that's what happens. You've got to take a knee"?

A. It wasn't the -- it wasn't a strong emphasis, but our leadership, they're great people and very understanding and reasonable. And if it came to that, you know, where, "Hey. If you need to take a knee," or something like that, they would've bent over backwards on top of their 18-hour day to make sure that that Marine or sailor got anything or everything he or she needed.

Q. Okay. So just one more clarification.

A. Yes, sir.

Q. So you is a leader -- or, even, did you witness [REDACTED] talk about mental health to subordinates at all?

A. I did not. I did not witness that.

Q. Okay. And you did not yourself?

A. I did not.

Q. Okay.

A. I think -- when I counseled people within the J-2

directorate, I would say things like, "My door is always open. Please let me know if there are any issues." But I did not specifically mention mental health, sir.

SMBR: Okay. The script doesn't say anything about cross or follow-up after the board asks questions, but is there --

CR: Sir, I just have a --

SMBR: Is there an allowance for that?

AREC: Yes, sir. There is. And I just have a brief follow-up.

SMBR: Yeah. Follow-up and then counsel will have an opportunity to follow up as well.

REC: Thank you, sir.

CROSS-EXAMINATION

Questions by the assistant recorder:

Q. I just have a quick question: During your interactions with [REDACTED] on deployment, did you ever observe anything that would lead you to believe that he was suffering from PTSD?

A. No, I did not. He was, kind of, the rock that I would often go to when I was doubting, you know, a paper that I wrote, an e-mail that I was about to send out, and I would look to him for some guidance and some reassurance that I was on, frankly, you know, the right track. That my ideas and that my proposals were driving with what the command saw best, and I also just trusted his opinion. Other than being tired and grumpy like we all were, I didn't experience -- I didn't see him exhibit any signs of PTSD.

AREC: Thank you, sir.

SMBR: Cross?

CR: Yes, sir. Just briefly. It's actually -- I'm doing direct. It wouldn't be --

SMBR: Oh.

CR: -- cross, but --

SMBR: You got it. You know better than me.

REDIRECT EXAMINATION

Questions by the counsel for the respondent:

Q. Sir, you know, based on the conversation we just had, do you still believe that [REDACTED] should be retained?

A. Absolutely. Absolutely. I spewed a lot of guidance on that evaluation that I just mentioned that I used in Iraq that I still use a couple times a week. I like to get his opinion especially if it's an important initiative that I'm working. I like to backstop it with [REDACTED] opinion because I respect it, and I know a lot people in the command do as well.

CR: That's all I have, sir.

You?

AREC: No more questions from the government, sir.

SMBR: Okay.

[The witness was excused and withdrew from the courtroom.]

SMBR: Counsel, you can call your next witness.

CC: Thank you, sir. If I may for just a moment.

[REDACTED], civilian, was called as a witness for the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the assistant recorder:

Q. Sir, could you please state your name and spell your last name.

A. [REDACTED]

Q. And what city and state do you live, sir?

A. I currently live in Sneads Ferry, North Carolina.

AREC: Thank you.

CC: May I enter, sir?

SMBR: Please.

CC: Thank you, sir.

Questions by the civilian counsel for the respondent:

Q. Where do you currently -- where are you currently employed?

A. I'm currently employed for MCCS. I'm the transition program manager here aboard Marine Corps Air Station New River and Lejeune.

Q. And prior to that, do you have any military service?

A. I retired after 30 years honorably as a United States Marine. I retired as a sergeant major.

Q. And the board members have your biography, Sergeant Major, but if you could, please, give a summary of some of the major duty stations and billets you held over your 30-year career, sir.

A. I came in in '86. I started as a helicopter guy on a tour down in the West Coast. I was a Marine 1 crew chief with President Bush 41 and then the two years of Clinton. I went out in the fleet in the 53E community. I came back on recruiting duty from '96 to 2000. Back out to the fleet with the 53Es. Did the initial invasion into Afghanistan with the 15th MEU. In 2002, I got promoted to first sergeant.

From there, I went to 2/1. I did the initial invasion into Iraq in 2003. After that, I went to the schoolhouse down in Pensacola, Florida. In 2007, I got promoted to sergeant major. I went out to the West Coast and took an F-18 squadron on a UDP. I took a Huey/Cobra squadron out of Camp Pendleton back over to Afghanistan. In 2012, I came here and took over Headquarters Battalion for 2d Marine Division. Shortly after that, they selected me to be the Task Force Belleau Wood and then MHG forward sergeant major. I went forward with [REDACTED] [ph] and [REDACTED], so we had the BLS complex in Afghanistan in all of '13. And then in '14, I came home. They gave me the air station at New River for my last two years.

Q. And, Sergeant Major, when did you come to know [REDACTED]?

A. I want to say the spring of '97. I went on recruiting duty up in Oneonta, New York, when [REDACTED] came into the office.

Q. Where was he -- what was he doing in upstate New York?

A. He was a student at Hartwick College, which really, kind of, surprised me because Hartwick College was a pretty liberal school, and he came into the office interested pursuing the option as a Marine.

Q. And what option was he specifically looking to do while he was a college student?

A. Well, initially, what he wanted to do is: He wanted to

get enlisted into the reserves. He wanted to get experience as a young, enlisted Marine to really, kind of, get that full understanding of what it is to be a Marine. And then, eventually, upon graduation, looked to receive a commission.

Q. And, you know, how would you describe -- you know, at the recruiting station, you've got this long-haired guy from Hardwood coming into your office and wanting to be an enlisted Marine. How was he in terms of his motivation in wanting to serve?

A. Really, just surprised me. You know, initially, we didn't use the phrase back then "being punked," but here's this long-haired kid coming in that really just wanted to be a Marine. And I spent time talking to him. He said his parents weren't too keen on the idea, but he knew that's what he wanted to do and nothing was really going to stop him. We sent him to recruit training over the summer due to the reserve split option.

He joined the reserves centered down in New Bern, and then finished up with school and took a commission. While he was in the poolee program, [REDACTED] was always that kid that just wanted to be a part you. He would help me whenever he could. He actually even brought some of the other Hardwood alum down there, and a couple of them enlisted as well.

Q. And, you know, you processed him into the Marine Corps Reserves. He commissioned as an officer. Have you -- did you remain with him throughout, you know, your career?

A. We did throughout the years. You know, especially thanks to the advent of the e-mail, [REDACTED] and I would, kind of, stay in touch over the years at critical points as a lieutenant, as a captain, and as a major, and just be able to, kind of, see how his career was going. I think he always took pride in at least some of my advice and guidance as a mentor, and I wanted to offer whatever information I could get to him. We stayed connected over the years.

Q. You're resting that, as a poolee, he brought, you know, other students to you. He also did really well physically in all of your competitions. Did he pursue his officer career with the same motivations and desires for progression?

A. Absolutely. You know, he was just one of those guys you just can't stop. [REDACTED] was one of those kids that -- you couldn't tell him no. Again, he wasn't a big muscular guy, so he had to get by with just sheer determination and grit, and you couldn't hold a candle to him. He was one of the fastest one's in the pool and the DEP,

delayed entry program. Just solid.

- Q. Has he, in your opinion and your conversations with him -- we've heard a lot of folks that worked directly with him and adjacent intelligence shops while he was the OpsO. Do you have an opinion as to his work ethic?
- A. I've never actually worked in an organization with him directly, so, you know, I don't want to make too much assumptions. But just knowing the guy's heart, his head and heart was always in the right place. He was committed to try to do the right things for the right reasons.
- Q. And, Sergeant Major, you've maintained contact with him for over 20 years at this point?
- A. Correct. So we're at 21 years now.
- Q. And do you think that you're a pretty good evaluator in terms of an opinion of his military character and demeanor?
- A. Of his and others. You know, my career -- I spent the last nine years out of a 30-year career as a sergeant major where I spent the bulk of my time dealing with, you know, enforcing good order and discipline and understanding who has, what I would believe as, potential as being able to continue to serve. We've all been around to realize that after some adverse action, not everybody's able to recover. Some people just take it either too hard on the chin, they're not able to, kind of, dust themselves off and stand up and still be a contributing member. I thought about that long and hard with [REDACTED] and, unequivocally, without a doubt, I believe he still has the ability to continue to serve and not only serve, but to serve well.
- Q. And you're aware of the allegations of the long relationship he had with Ms. Day while married to his spouse and that he was NJP'd?
- A. Correct.
- Q. You've evaluated a lot and a lot of officers, you know, for the course of your career. You've served with a lot of different folks. What is it about this lieutenant colonel that's brought you here away from your professional duties taking you back into a military proceeding to support him?
- A. I just got to say, for the last nine years -- really the last 14 years, when I got promoted to first sergeant or sergeant major -- really just understanding what's the depth of a person's character. I always, kind of, viewed it as: The true testament of a man's character is how well he faces adversity. Even if it was something that they brought upon themselves, do they

have the ability to, kind of, stand up, dust themselves off, and still contribute.

And I know when [REDACTED] and I had had the conversation when they explained to me what was going on, it was hard for him, and it wasn't a proud moment. It wasn't anything he take pleasure in relay to someone you can considered his mentor, but he knew that he had to, kind of, tell me the truth. And after that, I really asked where's his head and heart, and I believe he can continue to serve. And I believe that wholeheartedly.

Q. You mentioned you're a rules guy. I mean, you're a Sergeant Major. You know, and then as we all are, we're subject to the code. But do you support, you know, despite his -- he's been punished. He's command. He's O-6. He's gone to NJP. You know General Mundy evaluated the investigation these gentlemen have and gave him office hours. Is it your -- what would your recommendation be: retention or separation?

A. Recommendation would be: retention. I don't know the information that General Mundy had, but I just know that the basic general rule of thumb that if an offense is able to be adjudicated at a non-judicial punishment, you adjudicate at a non-judicial punishment and see if that person continues to serve. All offenses are very serious, but not every offense is what I would consider a capital offense that, you know, limits their ability to continue to sere.

[REDACTED] was held accountable and he should have been without a doubt. But I still believe he has the ability to server.

Q. If you were -- if you were still on your active duty career -- I know you served 30 years -- would you have any reservations about serving in a command with the

[REDACTED] ?
A. Not at all.

Q. And do you believe he should be retained?

A. I do believe you should be retained.

CC: Sergeant Major, thank you. I don't have any additional questions. The government counsel may. The board members may as well.

SMBR: Cross-examination.

AREC: No questions, sir.

SMBR: Okay. Board members?

MBR ([REDACTED]): [Nonverbal response.]

MBR ([REDACTED]): [Nonverbal response.]

SMBR: I have no questions.

[The witness was excused and withdrew from the courtroom.]

SMBR: You can call your next witness.

CC: Sir, if I may, you know, take a brief recess just to make sure that I've got [REDACTED] and [REDACTED] [REDACTED] standing by telephonically?

SMBR: How much do you need? ten minute? Or what do you need?

CC: How close are we to 1100?

REC: Six minutes.

CC: Sir, if I may just -- and I think it's fair.

SMBR: Okay. Yeah. That's fine. Whatever we need.

CC: Thank you, sir.

SMBR: Okay. We'll stand in recess for 15 minutes.

AREC: The time is 1052.

[The board of inquiry recessed at 1052, 23 August 2018.]

[The board of inquiry was called to order at 1107, 23 August 2018.]

SMBR: Okay. The board will come to order.

Please note the time, Recorder.

AREC: It's 11:07.

SMBR: Okay. You can proceed with the witness. Swear him in please.

AREC: Yes, sir.

██████████, U.S. Marine Corps, was called telephonically as a witness for the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the assistant recorder:

Q. I just have to ask you a couple of introductory questions. First, can you please state you're full name and rank.

A. It's ██████████.

Q. And, sir, how do you spell your last name?

A. ██████████.

Q. And, sir, what is your current unit and duty station?

A. It's MARSOC, Marine Special Operations Command. I'm currently the assistant chief of staff in the G-5.

AREC: All right. Thank you, sir. I'm going to turn you back over to ██████████ now.

WIT: Thank you.

CR: May I, sir?

SMBR: Proceed please.

CC: Thank you.

Questions by the civilian counsel for the respondent:

Q. ██████████ can you hear me okay?

A. I can, yes, sir.

Q. So, please, I understand you're currently the G-5 at MARSOC chief of staff. Can you please -- the board members do have your biography. Can you summarize some of the duty stations and billets you've held over your career, sir?

A. I think -- obviously, for the most important or just to summarize, I started off as an infantry officer in standard infantry units through, you know, 2d Battalion, 3d Marines, Hawaii, a couple deployments -- short deployments under a UDP. I spent within Guantánamo Bay Security Forces; a year there. And then of course some Headquarters time, MARFORRES. Also, I think the most significant is returning -- most significant is this -- specific for the board members, I would say, in general, is just the time coming to MARSOC for the first time in 2008 where I first reported to what was at the time the Marine Special Operations Advisory Group that would be

3d Marine Special Operations Battalion, then 3d Marine Raider Battalion.

I spent some time there, a deployment overseas to West Africa, back from that deployment into 2d Marine Special Operations Battalion as the operations officer. This was in 2009, so I served in that capacity from 2009 to 2011. That was as -- with, again, [REDACTED] as a battalion commander, and then [REDACTED] as a communications officer, and then as the -- his service as the executive officer. Following my time -- during that time, we also deployed forward in Special Operations Task Force West. Upon return from that deployment, I had been selected for Lieutenant Colonel. And then I assumed the role of operations officer for the Marine Special Operation Regiment. I served there for two years. During that period, was selected for battalion command. I served as 1st Marine Special Operations battalion commander from February -- I'm sorry -- March of 2013 to May of 2015.

Upon giving up command, I reported to and attended the National War College for a year. Then in the summer of 2016 -- June of 2016 -- reported to the joint staff the last two years of my career within the deputy directorate office Special Operations Counterterrorism. I also "J-coded" as a J-37. Finishing that command recently, I checked back into MARSOC in mid-July where I am now clearly the assistant chief of staff at the G-5.

Q. And, sir, I'd like to go back to your first experiences with [REDACTED] in 2008 to 2009. What billet were you serving in?

A. Sir, 2009 is when I checked in to the 2d Marine Special Operations Battalion. I served as the Battalion operations officer. At the time I checked, [REDACTED] -- at the time, [REDACTED] -- was serving as the communications officer, the S-6.

Q. And how would you describe him in the performance of his duties as both the Comm and and an officer?

A. Okay. And let me -- I will. I promise. I will reanswer that. Let me just state this up front. This is going to flow into his assignment as the battalion executive officer. So actually, my first encounter with [REDACTED] -- I'm taking this step-by-step actually. So as the S-6, when I checked in to 2d MSOB -- part of that was because 2d MSOB would be organizing for its first battalion deployment to Afghanistan, so at that time, obviously, that was a new environment, I would say, for all of us.

So with my background and experience with not only

focused on operations but also how we formalized our headquarters team and made sure that all staff functions were integrated into the plan. So I highlight that because it gave me -- you know, there may be certain commands -- you don't get as much time or experience with the S-6 as a fellow staff officer. But in this case, I felt that I did get quite a bit of experience with [REDACTED].

What I witnessed and watched [REDACTED] -- how I watched him perform is -- I think there's three key things to highlight: One was his -- I'd say just overall his professional approach to solving some really hard problems that, you know, from the very get-go was always a we-can-figure-this-out mindset. He always presented COAs for both me when it was appropriate as the operations officer and more importantly to the battalion commander for decisions that I felt were always very feasible and supportable concepts of communications and infrastructure, whether that be how we were going to design our command and control load, our joint operations center, or how we were going to plug in to 15-plus different outstations across half of Afghanistan.

I felt that [REDACTED] was absolutely focused on solving problems and getting the battalion in a position to be successful in its missions. With that, I think what I'd also like to highlight is in order to have that confidence to deliver was his team and how he built his team. And what I witnessed over the year -- over the build I should say, not just two years total -- is a section that was truly accountable for his actions. When I say "his actions," it's personal and it's equipment. Make no mistake about it, with any command we have young Marines that have -- that do things at times that are not within -- you know, within the good order and discipline of our Marine Corps and our units. I would say that there was always accountability had.

I have no recollection or knowing of any times that anything was every pushed aside, taken lightly. I do remember when there were incidents where accountability was had appropriately. Communication was transparent and clear and enforced. But that was a common trend, and that's going to be important here in a mission -- in a minute here as I talked about it in role with the XO.

The second part was how he built his team in terms of professionalization and inspected great things from them, but he built them in a manner to be able to deliver. It wasn't unrealistic expectations. It was reaching out it was figuring out what types of training

needed to be done, where he could strengthen individual skill sets that then delivered a more collective capability. I think that [REDACTED] was a fantastic manager of talent.

He put his Marines in positions to be successful. So I thought, To do that, you really have to be an engaged leader. And, again, that will come up here -- that will play into this second part here. But these are the traits and the trends that I saw with [REDACTED]: to do this, to build this collective capability, to reach out and get additional training, to reach out and figure how to get different communication systems -- take the best from one system, take the best from another, combine it.

To do those types of things took a unique ability to really build relations with the Marine Corps, build relations within our higher headquarters to earn from the component level, it really took some outreach. [REDACTED] professionalism allowed that to happen.

- Q. So you mentioned that -- in building up to your -- some of the criteria that you're evaluating him as it relates to -- the second part of your question was related to his selection as XO as a new major. Can you elaborate on that piece, sir? I know you were building in to it.
- A. Yeah. No. That's perfect. That's exactly where we need to go. So it went down and we're probably in country for -- I'm just going to guestimate -- probably about a month and a half to two months. Due to some personal issues, our XO at the time, which I will say wasn't the most experienced staff officer that we had and was the XO for a purpose, for personal reasons, returned home in the deployment. This was a one-a-month, so we had a significant gap.

The capability to replace our XO with another field-grade officer from MARSOC coming forward was not a COA that could be executed. It couldn't be supported, so there was a choice to either try to gap it, which I think anybody would -- you know, obviously everybody in that room has enough experience and understands the significant risk of gapping an executive officer's billet.

And I remember after a direct conversation with [REDACTED] where he asked me, you know, who he thought -- and I know he had in his mind too. This isn't my single COA, but I know he had this in his mind as well, but we had a discussion about who could become the XO and who could serve in that billet and do what we needed to do. And I think it's fair to say -- it was clear that it was [REDACTED] that could do that. And

for two reasons: One, it goes back to how he established two communications and everything I've already discussed, but he also put them where they can execute the mission downrange, which allowed, I think, [REDACTED]

And I don't want to speak on his behalf but took pleasure of the idea of being able to pull him as the S-6 with a focus as being the XO. I will tell you my experience with this happening is I think [REDACTED] was a little overwhelmed by it, not in his action, but I think just his personal life -- that's not something that he saw. It's not something that he went after. It's not something that he was thinking about. He was just lost into the role of the mission. And I think it would've been natural for anybody to feel some pretty significant weight on their shoulders from this beast.

At the time, we're operating during the surge. We expanded to 15 different sets. I think our SOTF I think went about an average of total personnel about 850 personnel that expanded, like I said, about over half of Afghanistan basically from back Badghis province moving south down through Herat and Farah and over into Helmand province. The accountability associated with members of the SOTF were moving into action, the part of the forces that would become wounded in action, and, of course, you know, everything that goes into just the role of accountability across the front.

At the same point, we took on a significant amount of theater provided equipment. If I'm not mistaken, I think it was roughly about 150 -- maybe even pushing 200 million -- dollars worth of equipment that accountability systems were not necessarily in place, so a lot of that fell on his shoulders to figure out how would we account for this quickly arriving equipment mostly associated with the MRAPs and the M-ATVs and the different vehicles and comm systems and counter-IED systems that were coming into country. So again, a lot on his shoulders. I will tell you he executed extremely well. I mean, just absolutely -- I'll tell you, he executed flawlessly.

And he did all of those things that I've already talked about, and I don't need to reiterate unless there's something you want me to expand on, but the traits were all there. And the accountability -- the professional desire to serve a greater good -- I think that's the thing that I kept coming back to [REDACTED] when he asked me about this and I replayed this and he asked me to be a character witness for him. To make that determination to do that, I had to be 100 percent committed that I

felt that this was a case worthy of it. I recognize what's at stake here for him personally, for everybody in this room professionally. And I don't take that lightly.

So I think I had to keep coming back to that, and one of the traits that I've always seen in [REDACTED] and had an admiration for is what we always seek in our Marines: an understanding to serve for the greater good, that it's not about you individually. And his flexibility and ability to do that really stuck out with me over the years. Yeah. So honestly, I'll pause right there where you make want to take that.

Q. You know, sir, I think that you're getting us to the point of you're aware of the allegations. The board members do have your written statement as well to supplement your testimony, but overall, you know, after the time when you were serving with him as the XO, your professional experiences with him -- you described him to me as above reproach, great initiative, dedicated, and instrumental at MARSOC, you know. Why did you use those terms to describe his professional accomplishments during his time under your purview?

A. I think it goes back to where our -- I believe it really goes back to what I was stating, which is it was about understanding the mission. It was about understanding how to build a to execute in a manner that made -- that delivered mission success. And in doing that, it really -- it put MARSOC on the map. At the end of the day, this is the first time that MARSOC deployed in '05 Headquarters for an 11-month deployment. Yes.

There was one SOTF that went before us on a shortened timeline. And I'm sure they executed well. But this was -- within a one year straight within a combined joint special operations task force with -- call it like it is -- Army flags flying everywhere, and we were the Marine unit that came in. And think that that mindset was contagious. And again, not just in his personnel, but in how he to include myself as being part of that staff and more senior to him really was able to stay focused as a group. And he deserves credit for that. The one that I'd like to highlight too that I think is [REDACTED] strength probably represents MARSOC and the Marine Corps -- and I want to say it's bigger than MARSOC -- the Marine Corps so well was [REDACTED] always served as a humble officer.

I don't remember a time -- recall a time when [REDACTED] was ever self-seeking or something became obvious through actions or even vocal where [REDACTED] was seeking something greater in responsibility, that he was ever seeking

command. I don't think that he's the type of Marine that sets out for that. I think that he sets out. He'll want to serve in the most relevant billets, to be a member of a team, to serve in the hardest environments with the hardest problems and to work and to be able to formulate and work within a team and to formulate and mature teams to be successful.

And I think, again, you have more of his record than I do in front of you, but I think that it's that type of mindset and that type of performance in environments which would lead to being selected for battalion command, which I don't think that was ever on his radar. I don't know, maybe a year out it was. But I will tell you, in 2009, '10, or '11, I don't think that that was on any of our radars. So again, it just comes back to just that selfless service that I think sticks out amongst leaders across our Marine Corps.

Q. That selfless service, you know, with lots of time devoted to his time as an XO as an OpsO during his 10-year career duration at MARSOC.

A. Correct, yes.

Q. Sir, you're familiar -- you know, we talked a little bit about his marriage to his [REDACTED] -- to his wife [REDACTED] and separated spouse, soon to be divorced. You know, what was it like to be geographically separated from her during the entire 10 years of their relationship?

A. Well, you know, I think [REDACTED] needs to answer that. I will tell you -- from my prospective, I'll highlight two things that I feel that is fair for me to highlight. One is just through communication and working together. At the time, [REDACTED] was engaged during that time and I don't remember exactly what year he got married, but it was known that the woman that he would marry was a professional in her own case.

You know, they were both young professionals and striving to be, you know, extremely, you know, good at what they do. The pressures of being separated at all times -- I know that [REDACTED] has shared with me that the plan was always to come together. It doesn't seem like that ever happened. You know, again, how many -- you know, all I can say there is what [REDACTED] has shared with me, and I have no reason to not believe him. But I think that at the end of the day it's hard when you have two professionals, whose career comes first.

What I will highlight is as my letter -- and I don't need to reiterate it, but, you know, I consider myself extremely fortunate because of my wife's personal decision to put her career second to mine. So I can't

compare the stresses in my relationship to the stresses in [REDACTED] relationship. I think they're just -- they're different. I will tell you I don't have a lot of confidence in my ability to handle a relationship that would have been similar to [REDACTED]. I can't imagine that it would've ended -- I can't imagine that it would be a healthy relationship that's ongoing right now. Again, that's speculation.

But what I did do was spend time trying to put myself in that position a little bit just to make sure that I didn't judge [REDACTED] lifestyle or my personal experiences with marriage and relationship if that makes sense. At the same time, I will tell you the one thing that I do share in common [REDACTED] that has been clear as we discussed his case was that we both have a shared experience of being raised in Catholic families and understanding, you know, what marriage is.

We both were raised by fathers who have a belief that failed marriages falls more on the shoulders of the husband. And again, whether that's right or wrong, it's not, I don't know. But at the end of the day, it's putting the responsibility on us as the man of a household to solve problems, to address problems, fix things. And by all means, a failed marriage is really not an acceptable option. I mean, I grew up in a household with that -- with a father with that mindset. It's going to experience -- exactly that in a marriage. So that's his petition.

I think that [REDACTED] feels -- felt a lot of the same from his father. So again, these things, I think they plug in, and that's where I am trying to connect the dots on where I may have some similarities with [REDACTED] thoughts. Again, because, you know, what it really gets to, you know -- like, how did it get to where it got? And that's a really difficult piece. And I'm willing to share my -- I do want to share my point on why I think -- you know, but I'm going to pause for a minute just to make sure it's not something specific to what was addressed.

Q. No. I think we're about to talk about his acceptance of responsibility at NJP for the actions that have brought us here and affair. Go ahead, sir. If you would like to expand.

A. Yeah. Let me take it from this perspective. But just being, you know, obviously, forthright with the board of very experienced Marine leaders, I'll just tell you one thing I really had to look at myself as in terms to have this discussion with you today. Again, as I stated, I understand the responsibility that everyone involved,

mainly the board members, in what's on your shoulders in terms of what you are charged with delivering. Also, as character witnesses in the role play and the responsibilities we have with the subject, within ethics of the Marine Corps, and good order and discipline and everything that follows in.

So I share that only because I really -- I did spend a lot of time self-reflecting and trying to connect the dots back to the marriage piece to understand it. How could it end there? How could I come to a board of experienced leaders and make a recommendation that I think [REDACTED] should be retained? And so I can't give you the -- I don't know if there is a textbook answer. All I can tell you is my beliefs and what I think, how I arrived to my conclusions, and hopefully that helps you. Part of this is -- I think as I pulled this back with [REDACTED] and in talking through -- and he's very forthcoming with me. Obviously as a character witness, he wants to be open and frank with me on all portions of this.

And so I want to -- the thing I come back to was the duration peace though. And wouldn't it be different if it was an event that lasted a night or a weekend or only a month? I don't know. That would be speculation and we don't need to go there. What I will say is it does get even more complicated when you look at the length of this. And then you have to question about loyalty and trust and the things I have to validate within myself to be able to speak very -- just very open, but believe in what I'm saying based on the magnitude in the level we're discussing this as.

So with that, how did I come to an agreement that I could trust what I saw through our times of operating what -- how I see him conduct himself on a daily basis although a shorter period in the G-5? How could I come to this conclusion that [REDACTED] trustworthy and deserving of an ability to be retained in the Marine Corps? And so I have a few things that I would like to share. One is: I don't -- I think when you look at the duration piece, I don't think [REDACTED] -- I look at this, kind of, like a, "How did it get here?" And again, I thought -- hold on. I guess what I'm saying is, I've come to the conclusion that [REDACTED] is not morally bankrupt.

I don't think [REDACTED] woke up every morning and that this was an excitement in his life and something that he thrived in and loved the fact that he may be deceiving the Marine Corps, deceiving Marine leaders, deceiving his wife, deceiving his family, and trying to live some,

you know, I don't know, fueled, adrenaline lifestyle. I don't think that one bit. The lost has been with step by step. Of course I don't condone or justify the action, and I think there were many times that [REDACTED] could have off-ramped this very early on and saved himself a lot of troubles. I think he'd be the first to agree to that.

And if he could go back in time, I think he most certainly would. However, it became layed approach to where he was digging deeper, but I think digging at a pace that it just didn't come to fruition of how deep that hole was until it exploded. And I think at that point -- I think there's a couple of things that stand out at me in [REDACTED] that make me able to say why he's still trust worthy.

One is like I said. I don't think he's morally bankrupt. I think this weighs heavily on him. I think every single phase of this six years weighed significantly heavy on him. And then he and his wife would make a decision that would lead him to take another action maybe for the good, maybe trying to be the -- I think all of that is due to moral weight. I think that if [REDACTED] was morally bankrupt, he wouldn't have a single sense of remorse in his body, and I think that that is absolutely not the case.

I think [REDACTED] is truly remorseful. I think his sorrow is deep. I think it's deep in his soul. I think it's in his eyes. I think it's in his voice. And it's towards his family and it's towards the Marine Corps.

And again, I've arrived to a point to where I can say with confidence that I believe that. I believe that [REDACTED] remorsefulness has led to a couple of things that didn't come to fruition in time, but again, it goes back to that moral piece: Is he morally bankrupt, or did he have a moral lack of judgment? Which I think is significant for me in my determination to stand in support of him. And I think that -- I do believe that when [REDACTED] stated -- it had gotten so heavy that he knew he couldn't take battalion command.

Now it popped, this IG. The problem was raised before he had an opportunity, before he had the opportunity to address the CG and basically state that he was not in position to be able to command a battalion. But what I'm getting at is I believe that he was going through that mentally. He was going through that mental play that he couldn't do this. And he couldn't do this because he does have a soul and he is moral and he's not morally bankrupt and he knew it was wrong. Of course,

he was trying. I'm sure he was trying to figure out how to calculate all of this, you know, what this is going to lead to, but again, that's just one piece I want to highlight.

The second piece is the remorseful -- his remorse. I truly believe it's genuine. Again, I think it's truly genuine, and it's genuine to exactly who it should be. It's genuine to his family, and I think it's genuine to the Marine Corps as an institution because he understands what we are and what the Marine Corps expects from its Marines and more importantly its leaders.

So the last piece that I factored in on my decision is the accountability piece. This is about accountability 100 percent. And so in my mind, at what point is the accountability right to the level of what [REDACTED] has done? And I think when you look at that -- at least when I look at this, I look at accountability, and I say, "Of course. Accountability must be had. There's no doubt about it."

Based on what he did, should accountability be at a level where he's dismissed from the Marine Corps immediately and possibly with something below an honorable discharge? Should it be allowed to get to retirement, allowed to be retained? I think [REDACTED] is thinking -- well, first of all, he's been held accountable. We know that: NJP. He was removed from a battalion command opportunity. He will never be competitive from anything within the Marine Corps again. He's basically flatlined even if he were to serve another -- whatever he's got left for service agreement. So I don't know what that would be, but, even maxed out, I think it's roughly about seven years.

The bottom line is: Even if he serves another seven years, he's flatlined in paygrade and where he would be able to serve within the Marine Corps. So I think that that is significant in terms of accountability when you look at the projection he was on. There's no doubt. And it is -- and I'll be the first to say this -- absolutely fair, and those actions should have absolutely been taken.

Now, what really, kind of, stuck out to me though is that -- so then I got -- this is just me talking to myself at the time and working myself through this phone. So is [REDACTED] looking -- he's just got to get to 20? Or is he seeking retention for longer service? And in discussions with [REDACTED] I've come to the conclusion that [REDACTED] is truly seeking retention in the Marine

Corps for as long as the Marine Corps will have him for a couple of purposes. One is because he can be -- he absolutely can be value added based on his skill set and based on what he brings to the table.

I do also think, second -- and maybe you can reverse me. I don't know which one's more important to him or not. He'd have to answer this question -- but I think the second piece is to -- is it goes into the remorse, and it goes back into this -- he wants to set the record straight: Although this was a significant amount of time, this isn't who he is, that he's not a morally bankrupt officer who would not serve the Marine Corps well. And I think part of [REDACTED] desire as to serve for extended period of time if retained is to show that and to make sure that his individual legacy -- not that he's after a legacy -- but it's not grouped under this significant -- one event in terms of his personal life, but what he's truly done with selfless service to the Marine Corps.

There's not a doubt in my mind [REDACTED] could walk away from the Marine Corps and be employed successfully, make money, and go on and like that -- a successful life. I don't doubt that one bit. It think it's more than that. And I think that that is also one of the core reasons why I can talk to you honest, with good confidence in myself, that I believe that. And I don't think that this is so much about protecting or not flushing away 18 and a half years of active service. I don't think that that mindset is there at all.

I think this is about redemption in the right way to show that he has been value added to the Marine Corps to do everything selflessly for the Marine Corps, not asking for anything greater, an opportunity to prove what he's about, and not be defined by a very significant but personal lapse in judgment for a personal event.

Q. Okay. You know, ultimately, sir, the board has to make a decision. You've got 20 years plus of military service. You're sitting a colonel of the United States Marine Corps. You know, what is your recommendation? Do you believe that [REDACTED] should be retained here today?

A. I do think that [REDACTED] should be retained.

CC: Sir, I appreciate you supplementing your statement with this very detailed -- and thank you for the testimony. I think it's been helpful to the board. The government counsel and the board members may have some as well,

sir.

WIT: Yes, sir.

SMBR: Government, cross?

AREC: The government has no questions, sir.

SMBR: Okay.

[REDACTED]?

MBR [REDACTED]): Yes.

EXAMINATION BY THE BOARD

Questions by the member ([REDACTED]):

Q. Hey, [REDACTED], [REDACTED] here. How are you doing?

A. Good. How are you?

Q. Good. So [REDACTED] record clearly reflects a career of outstanding performance and very high achievement, and he obviously brings a lot of value to the organization. And as you've acknowledged in your testimony, despite all this, he deceived and betrayed those that he claimed to love the most for six years as you pointed out the duration. So you know he violated our core values for six years.

You're getting ready to take command of the preeminent MSC in MARSOC. You're going to be required to hold a lot of Marines accountable while you're in that position, and what I want to know is: Even though he's been held accountable as you pointed out in your testimony, are you worried at all about the message that this will send to the Marines at MARSOC if he's retained and allowed to retire?

A. Absolutely. I worry about the message that it sends. I think that that is part of the challenge we have as commanders to spend the time to assist with the narrative. And again, it -- in a situation like this, individuals -- this crosses into individual beliefs. It crosses into the Marine Corps ethos most certainly. But it goes deeper than ethos. It's going to go into individual beliefs. Regardless of what I may personally believe, there will be Marines, sailors, and civilians that don't agree with my position.

I respect that. I understand what that leads to, which is why I'm adamant that decisions like this, if [REDACTED] were supported and retained, are not ignored. And as

leaders, we use them, and to be honest, I'd be willing to -- as done in the past with Marines not in this scenario -- but to utilize their experiences to have open discussions with leaders and to discuss not just accountability, but what it does and what it does risk and what it does fracture because you are right. There is risk. There is absolute risk with retaining [REDACTED]

I think the risk can be mitigated through engaged leadership, and, again, through [REDACTED] daily performance. And what I would like to offer is [REDACTED] professionalism and transparency to discuss it as needed and what he's learned from this in terms of moving forward. And also, to highlight from a -- you know, again, just when we look at this, you know, again, I don't want to -- it's hard. I don't want to compare apples and oranges, and I'm not trying to do this.

But we've gotten over some significant -- as Marines, not just in MARSOC -- we've gotten over some significant stigmas through open leadership and transparency and discussion. We've seen this though the years with -- mental -- I don't want to say mental illness, but let's just say PTS -- and what does PTS mean? And how do we address this? And can we talk about it openly? Can we get stronger from having these discussions? And I think we can. And I guess that's where I weigh myself, [REDACTED], is I think that we can -- this is something that is a risk to the Marine Corps, but I also think that it is something that, if used appropriately, can strengthen us as a Corps and strengthen our core values and maybe stop somebody else from having the same lapse in judgment in time.

MBR [REDACTED] Thank you very much.

SMBR: [REDACTED] ?

MBR ([REDACTED] No.

SMBR: I have no further questions. Is there any redirect from either?

REC: [Nonverbal response.]

CC: [Nonverbal response.]

MJ: The witnesses is dismissed.

[The witness was excused and the telephone call was terminated.]

SMBR: Any more witnesses?

CC: We have him, but for 15 minutes. 1200 he's gotta go he said. He's standing by. I'm going to get him on the hook.

SMBR: Okay.

CC: So you guys have his bio. I'm going to get to the meat of what he's looking to project.

SMBR: Sounds good. Do it.

CC: Thank you, sir.

I apologize gentlemen.

SMBR: It's fine. It's part of the process here.

So is he -- did he mention after this next thing that he needs to be at when he might be available?

CC: Sir, I can find that out.

SMBR: So there's kind of two ways, and this is open conversation here, right. So there's two things we can do: We can recess, go to chow, and come back. You know, if we get, kind of, a bracket of when he might next be available.

CC: Yes, sir.

SMBR: I'm not really willing to entertain a continuance just for this witness unless you're going to make a case to me that we will, but if the government and yourself get together and you can stipulate factors or his testimony where you say, "He's going to say this," and the government says, "Roger. We stipulate that," then I would be willing to accept that if that's acceptable to all parties as well.

So I mean we could try, but I think it's most valuable to get him on the horn and talk to him. But at some point, I've done that before where the government's stipulated the, Yes. Okay. You know, this testimony can be put into the record based on what you say it's going to be and what they agree to should go on the record.

Does that make sense?

CC: It makes complete sense and we've done that.

SMBR: Does government have any opinion on that?

REC: [Nonverbal response.]

SMBR: Did you guys hear what I said?

REC: Yes, sir.

SMBR: All right.

DC: Sir, he called my office before we recessed. I can call back and say, "Did he give an alternative time after noon?"

SMBR: Okay. Yeah.

CC: Because I just got the message that he's free till 12.

SMBR: Okay.

CC: If we have to work on a stip of expected testimony, it's something we've done.

SMBR: Okay. You guys have got to figure that out and tell me what you want to do.

CC: I should be able to get a time hack, sir. If you want to take us off the record, sir, I'll try to call my office guys at work and see if we've got an alternative time.

SMBR: Okay. So we're going to wait though and hear what you have to say, right?

CC: I think that would --

SMBR: We'll stand in recess here and I will determine the time -- the duration of the recess here afterward.

Okay. So would you note the time, please.

REC: It's 1150.

[The board of inquiry recessed at 1150, 23 October 2018.]

[The board of inquiry was called to order at 1259, 23 August 2018.]

SMBR: The board is in order.

Will the recorder note the time.

REC: Yes, sir. It is 1300.

SMBR: Okay. So we're -- I think [REDACTED] is the last

witness.

CC: Yes, sir. And as we discussed prior to coming on the record, he is engaged in operational commitments; currently on pending a response back from him on his availability as the day proceeds. Defense is going to progress with our case and continue with the presentation of evidence at this time. We will -- upon conclusion of any additional witnesses, we are going to hear from [REDACTED] next. At the conclusion of his testimony, we will try and circle back to [REDACTED] if he is available. If he's fruitful in those attempts, we will discuss stipulating to expected retention testimony.

SMBR: Okay. Great.

CC: Thank you, sir.
Lieutenant Colonel.

[REDACTED] the accused, U.S. Marine Corps, was called as a witness for the respondent, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the Counsel or Judge (Fill In) :

Q.

Questions by the assistant recorder:

Q. Sir, you are the respondent in this case?

A. I am.

CC: May I enter?

SMBR: Please.

Questions by the civilian counsel for the respondent:

Q. Lieutenant Colonel, good afternoon.

A. Good afternoon.

Q. So please -- you have got just under 19 years of active service. You have got 21 years of reserve service in accommodation with your active. They have your bio. They have your fitreps. Talk to them a little bit about some of the billets that you have held.

A. Okay. I enlisted in the reserves while I was in

college. I was an aviation supply Marine. I worked for MAL5-49 in upstate New York. After boot camp, the following summer, I went to PLC Juniors; the Summer after that, PLC Seniors.

Upon graduation from college, I commissioned at TBS with Delta 2000. I went to -- I did a short time at Marine Corps Development Command while waiting for comms school to start. I went to comms school in Quantico. I graduated. My first duty assignment was Marine Wing Communication Squadron 28 at Cherry Point, North Carolina. While there, I did two deployments to Iraq, OAF 1 and OAF 2, respectively '03 and '04.

From there, I PCS'd to Okinawa, Japan, 3d Marine Division. I worked in the G-3 as the information management officer. I went on a number of exercises and one humanitarian deployment to Indonesia at the bridge of '04/'05 for the tsunami relief. I left Okinawa and went to Expedition Warfare School. I went from EWS to a short stint as a platoon commander at officer candidate school for about three months in the summer.

I went to Headquarters Marine Corps ARI which is basically, kind of, like the G-6 for Headquarters Marine Corps. It is not to be confused with C-4, but, basically, the responsibilities were to run the SIPRNET for a good chunk of the Marine Corps and the pentagon and a few other locations. I would say the bosses that I worked for -- but it was the OpsO for that unit. Upon completion there was when I first went to MARSOC in 2008. I showed up at -- I checked into 2d Marine Special Operations Battalion as the 6A. I became the 6 and Headquarters Company commander prior to deployment to Afghanistan, Special Operations Task Force West. I was the S-6 and H&S Company Commander. And then as you have been briefed by a few of the witnesses, I became the DCO -- the deputy commander -- of the Special Operations Task Force. That was about August of 2010. I came home and finished up necessary time.

I went up to joint Special Operations Command. I worked there for about three years. I spent a significant time traveling while at that command. I had some deployments. I had a lot of TAD. I came back from that command and went to Command and Staff College. Upon completion of Command and Staff College, I went back to what was then 2d Raider Battalion from 2d MSOB. I became the executive officer for a second go. I did that for a year.

I became the regimental operations officer while dual heading as the CJSOTF Iraq 17.2J3. I deployed to -- or

turned over the regimental officer job at roughly the end of January of '17. I went to a pure seige of SOTF billet at that point. I deployed in May and returned the last day of November of '17 and I have been working in the G-5 since.

Q. [REDACTED], I want to focus in on your time in MARSOC as it parallels largely your relationship with [REDACTED]. We are going to talk first about your commitments, your deployments, and then we are going to focus on your relationship and the allegations, okay?

A. Okay.

Q. So you mentioned that you arrived in Special Operations Command in MARSOC in 2008. How intense was your work-up and your time as the CommO when you transitioned, eventually, to the deputy commander and XO?

A. Yeah. I think like all billets of primary staff are -- particularly OpsOs-- extended hours. You are always working long days. You have predeployments on top of garrison requirements. You have to balance tasks.

Q. And we have heard from a lot of folks that you -- especially [REDACTED] and [REDACTED] -- you work long hours. That's not uncommon in the Marine Corps, but you were one of the last ones to leave. As your time progressed and you continued to Fort Bragg, you know -- not to get into specifics, but you spent quite a bit of time away and overseas?

A. I did. A good amount of time. Yes.

Q. Yeah. When you returned back to the MARSOC community after command and staff, did that work ethic change or did you continue to devote a majority of your time to -- you know, not ignoring your family but focusing on your career?

A. That is right. That has been consistent for my career.

Q. As a regimental OpsO, we would have heard from [REDACTED] about some of the steps you took and the work-ups and the deployment, and, hopefully, we still can. The fact is that you were hand selected to be his regimental OpsO?

A. That is correct.

Q. You were also his XO initially at the battalion level?

A. Yes.

Q. As you continued to the OpsO stage of your career at a regimental level, you continued to be devoted to your job?

A. I did.

Q. And we give that context because you had a personal life that was somewhat absent?

A. Correct.

Q. Your wife?

A. Yes, sir.

Q. When did you first start dating [REDACTED]?

A. [REDACTED] and I first met in the summer of 2003. I returned from a deployment. I met her at a barbeque that a neighbor was having.

Q. And how did -- over time and as she relocated to Virginia, did you all continue to communicate? Did you start to become more serious?

A. We kind of had an on-again-off-again relationship. You know, I met her in '03. I deployed in '04. I went to Japan for a year. I came back. We started dating again but a bit more serious. We broke it off again for a while then we got back together in about 2008.

Q. So you're -- what was she doing at the time, [REDACTED]?

A. She was a news anchor and reporter in Richmond, Virginia.

Q. And you were a communications officer and H&S Company commander moving forward to assist MARSOC in their first deployment?

A. For that battalion's first deployment, yes.

Q. I think that is what the Lieutenant Colonel testified to Earlier -- [REDACTED] -- excuse me. So let me ask you this [REDACTED], Were you both career focused individuals at this time?

A. We were.

Q. When did you decide to get married?

A. We decided to get married in 2009. It was probably early summer if I had to frame it. We were having a conversation with the, kind of, on-again-off-again nature of our relationship. We just kind of had that serious conversation, you know. Is this moving somewhere or not? And we decided to take a step in that direction. So that is when the conversation happened.

Q. You had this conversation and family started planning and everybody got excited?

A. They did. So before we really had time to finish the conversation or digest it, I mean, it was making phone calls. We were obviously excited about it. As the process went on, we got married over in Ireland. Relatives started buying plane tickets and wedding presents. I was very unsure of the situation. I

attributed it to cold feet. I would probably say a little bit more than cold feet. I just felt the pressure of everybody making commitments to follow through with it at that point.

Q. How soon into the relationship -- well, what was one of your understandings in getting into this marriage with [REDACTED]? I know you both are geographically located in different parts of the East Coast. What was one of the conditions of the marriage?

A. So we both understood that we were career focused upfront. I had a long deployment coming up in 10 or 11 months to Afghanistan. We agreed that we would focus on our careers for a short while and then eventually end up getting under the same roof at some point, even if that meant her moving down to wherever I was to receive orders.

Q. And sitting here today, have you ever lived under the same roof together?

A. No, we haven't.

Q. So when did you first start realizing, you know -- again, this is all context. You understand and have accepted responsibility for your relationships. In terms of the context, when did you first start having, in your mind, problems in your relationship?

A. I mean, from the onset we did. We never -- something was always missing. We never really clicked the way that I had observed in other married couples, particularly newly married couples. And the distance -- I mean, I am not blaming the distance, but it never really gave us an opportunity to see if that was going to develop. So coming back from deployment in '11 in the typical fashion of very short stint of a few days together, she went back to Richmond. I got back to work. And then in 2012, I pretty much reached a breaking point with her. We, again, had conversations about her moving. Typically, her contract period was at the beginning of the year. So in about December time frame, we had the conversation about her picking up and moving. And she told me that she was going to likely extend her contract again. That is when I first told her that I wanted to seek to get a divorce in December of 2012.

Q. Did you also seek guidance? We heard from some of your military witnesses, and these are folks that you confided in as well with your unhappiness with the marriage. And you wanted to pursue divorce. They have got a statement from your mom and dad in there and siblings. Did you seek out any guidance from your family at this point?

A. I did. I talked to my parents about it as soon as I left, and the response was, I guess, what I kind of would have expected from my parents being an Irish Catholic large family: Divorce is not something that we support. It is something that you two need to work through. So I just kind of listened to their advice and tried to work on it.

Q. You know that you should have gotten divorced at that point?

A. I do. I should have followed through.

Q. You tell me that it is one of the biggest regrets in your career?

A. Yes, sir.

Q. So the relationship continued. Does she stay in Richmond?

A. She did.

Q. All right. She didn't come to live with you?

A. No.

Q. In fact, you told me that you guys tried marriage counseling for a very short period of time because she was just not willing to entertain it. But what did the counselor say to you at one point?

A. So we went through two counselors. One, when I was stationed at Fort Bragg. We did a couple of sessions with that counselor. We kind of hit our usual stalemate where we just, kind of, got to that point where instead of pursuing it, we shifted back to career focus and just kind of ignored the problems that we had.

The second phase of counseling that we went through was when I was at command and staff in Quantico. We definitely took a more hardline approach towards it. I figured if -- with the proximity, at least, at that point, this was the opportunity to try to work through our marital issues. And we went through a number of sessions with a therapist who closed our last session with, "I don't really know what to do with you two." And that is a direct quote from him.

Q. And, you know, the times that you have been more aggressive, Lieutenant Colonel, in moving from the relationship?

A. I should have. Yes.

Q. And hindsight is 20/20. We are sitting here at a board. You are going to talk to these board members about what you did. You meet someone around 2011 to 2012?

A. I did.

Q. Yes. Ms. Day?
A. Correct.

Q. Were you emotionally connected to your spouse?
A. No, I wasn't.

Q. You were married. You didn't get a divorce. You should have. How did your relationship progress with Ms. Day?
A. We started off as friends. We had a number of common interests that the relationship grew on, and it developed into an emotional connection. I should have been forthright with her, obviously, from the get-go.

Q. So, Lieutenant Colonel, these three men have to make a decision, right. You spent time -- trips with her. You talked about marriage. You were very entrenched in the relationship with her. Why didn't you tell her?
A. I was afraid of losing her. I had that emotional connection with her that I had wanted in marriage, and it was scary to think of losing that. It was something that I had been looking for my whole life, and I found it. I was scared to lose it.

Q. Do you regret hurting her?
A. One hundred percent.

Q. [REDACTED], do you have a daughter?
A. I do.

Q. How old is your daughter?
A. She is almost ten months.

Q. Are you involved with her?
A. I am. I try to see her every other weekend at least and financially contribute to everything that she needs.

Q. So your relationship with [REDACTED] was not something that you should have continued and you did so and you conceived a child. Why did you stay -- why did you stay connected to her?
A. I thought that I owed it to her. I thought it was the right thing to do. I thought that it was what was expected of me from my upbringing. It was just the way I was raised in the Marine Corps. It is work through your problems. I regret not working through them earlier and dissolving the marriage.

Q. You know, we are not here to make excuses. You have already accepted responsibility as it relates to your allegations at NJP in front of gentlemen. But let me ask you, How difficult was it, you know, in accepting that you had made a decision that the Marine Corps was going to hold you accountable formally at NJP?

A. I am sorry. Can you repeat the question?

Q. How difficult was it for you to realize that your decisions were going to lead to NJP?

A. It was very difficult. I have always put the Marine Corps first. And I was, for a while, blind to the fact that my misconduct was leading me down a very bad road of a number of bad decisions. And when I realized it, I was completely disappointed in myself. I was ashamed at what I had done, and I wish I could have gone back in time to fix things.

Q. So did you accept responsibility for it?

A. I did. I pled guilty at NJP.

Q. Part of this process -- additionally, there was a screening done by the MARSOC psychologist. It is part of the MARADMIN process with regards to separation required in every case. You do have some indications of traumatic stress -- posttraumatic stress based on that doctors evaluation. Have you been seeking counseling both professionally and personally as a result of all of this?

A. I have. I've been speaking with the MARSOC psychologist regularly, and I've been speaking with a therapist in Wilmington. That said -- I just want to be clear -- I don't blame anything mental health-related on my poor decisions. That's on me. Those were my decisions. You know, in just talking with these individuals, a lot of things have surfaced. And -- but I just want to be clear: I don't blame those things for my poor decisions.

Q. And that is important. You know that you have made some mistakes over the last several years, professionally, proficiency, and command selected. Has your NJP cost you that?

A. Yeah. I was -- the opportunity to command has been rescinded, which, as we know, precludes me from consideration for advancement through further selection.

Q. We have heard a lot of folks speak to your ability to continue to row. It was one way that it was placed that your assisting in operational mentality and that you're the point man, or the man to seek out on a lot of initiatives that are moving MARSOC forward. Have your -- has your clearance or anything been limited at all?

A. No. I have maintained a TSSCI. I'm still working in the skiff in the same capacity I was in.

Q. So, you know, you were investigated?

A. I was.

Q. And there was an IG complaint. A lot of information was presented to General Mundy. You were offered NJP as a result of collection of everything that these guys have. You've reviewed this command investigation. General Mundy has. You accepted. And you've maintained your clearance?

A. I have.

Q. Has there been any limitation imposed by MARSOC commanding general, generally, you know, or anyone within your chain of command about your abilities to perform your duties?

A. No, there hasn't.

Q. Is it fair to say -- and we've heard from [REDACTED] and [REDACTED] -- hopefully we will be able to speak to him -- [REDACTED], [REDACTED] [REDACTED]. There has still been full faith and trust and confidence placed in you?

A. There has, yes.

Q. Are you thankful to have that because you have made a mistake and you have learned from it?

A. I am. I've been in the Marine Corps over have my life now. It's always been what I wanted to do since I was a little kid. And not being able to go to work and do my job would -- you know, would be significantly impactful to me.

Q. Right. I have come to know you quite well through our time together. I mean, the Marine Corps is everything you have had. It is everything.

A. Yes, sir.

Q. It has been a part of your life since 97?

A. Yes.

Q. Your sitting here in your forties at a board trying to stay in.

A. I'm sorry. Can you repeat that?

Q. You are trying to stay in. Do you want to stay?

A. Yes. Of course. And could I add? It was brought up. I'm not seeking to make it to retirement. I want to continue to serve. I love my job. I have loved the impacts that we've, not just at MARSOC, but on previous assignments -- you know, it is just -- I'm not looking to try to make it to retirement. I want to continue to serve in whatever capacity the Marine Corps needs me beyond this.

Q. So there was a question asked by the board earlier today about the optic associated with retention in this

situation. Have you thought about that?

- A. I have thought about that deeply. I have let down a lot of people directly and indirectly. I have failed to set an appropriate example. I've wondered how my misconduct would be perceived, and I feel that, you know, it is my burden to bear. I have asked for forgiveness. I have recognized and accepted the misconduct.

The humiliation of losing the opportunity to lead a battalion obviously comes with a lot of questions or assumptions or probably worse. I've had a lot of conversations with a lot of people, and I have apologized to a lot of people. You know, I have been held accountable at NJP and all the things that follow from that in terms of not having the opportunity to promote again and do the job that I have been doing to the level that I was doing.

I also think that the command's response was appropriate and sent a clear message to everybody that observed it. You know, I was held accountable, and I was not let off the hook. And I support the command's decision on that. I should have been held accountable, and I was.

- Q. And you don't minimize any of your involvement. You accept full responsibility here for the actions with Ms. Day and the deception that came with that and [REDACTED]?
A. I accepted, and I regret it every minute of every day.

- Q. So your crimes alleged allegations, and it is a crime of emotion -- of compassion -- of deception really. I mean, it is kind of a blend of all of it. What is it if you were able to speak to [REDACTED] and Ms. Day -- what is it that you'd want to say to those three women that you've impacted with your decisions, Lieutenant Colonel?

- A. So I have confessed and apologized to J. C. and [REDACTED]. I have taken ownership for my actions. I know that doesn't make it all better, but I humbly apologized. I mean, even though [REDACTED] and I are going to be divorced, I still did not go about it the right way. And I regret not going about it the right way for what I put her through even though the marriage was on its way out.

And for J. C., I mean, it cost me somebody that I care deeply about. I wish I was up front and honest with her from the beginning, and I wish I had taken steps to dissolve the marriage. And now I -- you know, I lost the person that -- aside from my daughter -- that I care most about in my life.

And for my daughter, you know, she is obviously too young right now to experience any of this, but I have talked to [REDACTED]. And I told her when she is of an

appropriate age and she needs to have that explanation of what happened, that's on me. And I own that conversation. For whenever she brings it up then that's for me to tell her.

Q. You don't know whether that is going to be when she's 4? she's 6? She's 8? She's 12? But one day she is going to ask, you know, "Why aren't mommy and daddy together?" And you own that?

A. I do.

Q. So you -- if you -- [REDACTED], the senior officer who groomed you through your first XO job all the way through selecting you as an officer. [REDACTED], you know, took time out of his schedule to speak on your behalf. You have had tremendous fitness reports, evaluations and ROs. A lot of highly impressive and note worthy Marines have vouched for you. And to the junior Marines that you may have the privilege of continuing to be around, what do you say to the institution and those senior officers that have supported you?

A. I apologize for my actions, for falling out of line with what is expected of an officer. You know, I've always given 110 percent at work, and I let my personal life -- I let myself make some bad decisions in my personal life that I didn't correct. And everything piled on. And I owe them my sincere apology for that, just like I owe the nonmilitary people that I have hurt in this situation.

Q. So, [REDACTED], you know, these board members have to make that decision here today. You've got support. You've got 25 character statements. You've got a series of witnesses that have come in here and supported your retention. You know, you're not fighting. You've accepted your responsibility for your actions at NJP and here in front of these three distinguished gentlemen, but they make the decision here today. What else would you like to say to them about your desires to continue to serve?

A. Firstly, I want to apologize that you have to participate in this and have to see me in this light. You know, my actions, I'm humiliated by them, and I'm ashamed of them, and I'm embarrassed and sorry about them. You know, being a Marine is, like I said, what I always wanted to do, and I've taken that on full force in every job that I've ever had, and I'll continue to do that, you know, if not as much, even more effort than what I've put in the past because I have some making up to do now. I do feel that I have a lot to give back to the institution.

I think some very personal hard lessons have been learned here. I think that as a leader if I ever see a peer or subordinate or a senior, for that matter, starting to make some bad judgment calls, I think that my experience has put me in a position where I might be able to give some relevant eye wakening or eye-opening advice before mistakes are made, such as the ones that I made.

But I ask -- like I said a few minutes ago, I want to stay in the Marine Corps. I love this job. I love working with Marines. I love deploying. I love all the effects that we've had operationally in the interests of our national security, and I have been privileged with the opportunities that I have had. I never, you know -- I never expected to have the career opportunities that I did have, and I'm, frankly, disappointed and pissed off at myself for flushing that and washing it away based on my misconduct.

CC: [REDACTED], thank you. I don't have any additional questions. The board members may.
Government --

MJ: Does the government care to cross?

TC: Just one moment, sir.

CROSS-EXAMINATION

Questions by the recorder:

Q. Sir, we have your -- the members have as well -- the official statement that was provided for the NJP. I just want to ask a couple of clarifying questions based on some of the things in there. You mentioned that you thought the process of the divorce was going to be finalized prior to ever marrying Ms. Day, and you said in there you stopped the process after you realized the divorce could not be finalized. Do you recall, I guess, first, when you stopped the process?

A. So in Virginia, separation six months.

Q. Yes, sir.

A. However, if there's a child it increases to 12. When my daughter was born early increasing the separation time is when I knew that the separation period was going to be extended from the original separation date.

Q. She was born in October of '17?

A. October 28, yes.

Q. And when you say you stopped the process, did you take

A. affirmative steps or what did you do to stop it?
I told J. C. that we couldn't progress.

Q. Is that when you confessed to her or was that a separate incident? Because in a statement you talk about you confessed to her on the 12th of February?

A. That's correct.

Q. So are those separate? So stopping the process, telling her you can't get married, and confessing to her; same incident or separate?

A. No. It was -- we continued with the planning. As I mentioned in my statement, I was delaying a very hurtful conversation by continuing the process, speaking with divorce attorneys to try to see if I had any options and I did not. So in line with my bad decisions, I continued the planning to prevent that conversation, which I was pretty sure was the result in the loss of somebody that I cared about a lot.

Q. And by continue the planning, is that -- we have copies of checks and things like that.

A. That's correct.

Q. Talking about your confession to Ms. Day, how was that communicated to her?

A. Verbally.

Q. And I'm assuming you've seen the summary from the IG of her initial complaint, correct?

A. I did see it, yes.

Q. Do you know why she would say that she found out about it through Facebook and phone records?

A. I think what she meant -- and I don't have it in front of me, but she found evidence of me being in Richmond, but I had confessed that I had been married before she found that information.

Q. And this kind of goes to the question about continuing the process or stopping the process, you mentioned in your statement, "We never received paperwork for or filed a marriage license?"

A. That's correct.

Q. Again, do you know why she would say that one was filed in one of the counties in or around Asheville?

A. It wasn't filed. There was an online process to request one, but it was never retrieved or filled out, and that's when I told her we couldn't progress at that point.

Q. You might've specified this on direct. I know you said

A. 2009 was when you were married. When in 2009?
It was December 8, 2009.

Q. And your relationship with Ms. Day began in November of 2011?

A. I'm not sure the exact month. It was fall of '11 though.

Q. And then when did you find out that your wife was pregnant?

A. I found out -- I don't remember the exact date. It would have been March -- late March or maybe mid April of '17. Late April maybe.

REC: One minute, sir. Thank you, sir. I have no further questions.

SMBR: Redirect?

CC: No, sir.

SMBR: Okay. Board members.

██████████, any questions.

EXAMINATION BY THE BOARD

Questions by the ██████████:

Q. You stated that you stopped the process to get married after your daughter -- around the time your daughter was born?

A. No sir, I did not. I continued with the planning and then I began to -- frankly, I didn't know what to do at that point. I did not want to lose J.C., and I knew that having a conversation with her was going to cost me that relationship and that connection I have with her, and by not stopping the plan, even though I knew it was not going to happen, was an effort to delay a conversation.

Q. You say you waited until -- well, when your child was born extended the waiting period for your divorce to be final?

A. For separation. Yes, sir.

Q. I'm just trying understand the timing. You knew that your daughter was coming in March yet you continued to plan up until late that year?

A. Yes, sir. So I was clear with ██████████ that we were separated, you know, shortly after deploying. When she told me that she was pregnant, we, you know -- I figured that is different. That is a game changing situation,

and I convinced myself that I needed to work on the marriage in the interest of my daughter.

And then after being deployed and once we kind of got our pace under us and reflected on it, I realized -- frankly, thinking back to my own childhood, I could contribute to her life as a divorced father as well, if not better, than an unhappy father geographically separated. So I stayed consistent on that message with [REDACTED] while continuing to plan the wedding.

Q. In the e-mail traffic that was provided in the investigating officer's report going way back in your relationship with J.C., it indicates an on-and-off relationship. Is that how you would characterize it?

A. Yes, sir.

Q. What was it -- what caused the on-and-off nature of that relationship?

A. At points, sir, you know, I tried to work on the marriage and made that the focus. For example, when I was at Command and Staff, we went to marital counseling and, you know, it would be an example of one of the off periods. But I just kept going through the motions of the marriage and realizing the continual reinforcement that this is not salvageable. I continued to make bad decisions and not clear the air with both women.

Q. Did you -- the e-mail traffic painted a picture of you continuing to string J.C. along, you know. "I can't commit, but I want you to stay with me. Hold on." Is that an accurate reflection?

A. It is accurate, sir, in the fact that I was trying to make a decision on whether -- or how to end things with [REDACTED]. And it was with the intention of clearing the air with J.C. and hoping that, you know, she loved me enough to try to work through it. And then, you know -- I mean ending marriage is a serious thing. I regret making the decisions I did to not end it, but I did put effort in to try to fix it.

Q. So the leading up to February 2018, did you ever really intend to marry J.C.?

A. When I was divorced, I was planning to marry J.C., sir.

Q. Did you ever consider coming clean with J.C.?

A. I did, sir. I wanted to tell her when we started talking again in the summer of '17. Being in Iraq, I didn't -- I should have told her when we started talking in the summer of 2017. I convinced myself that I would deal with it when I got home from deployment so I could maintain focus. But it was obviously the wrong decision. I should have come clean with her if my

intentions were to reopen communications. But, no. I delayed with the intention of talking to her when I got back from Iraq.

Q. The investigating officer stated in his investigation that he searched records in and around Richmond for filings of divorce or separation between you and [REDACTED] and wasn't able to find any. We haven't had any presented here as evidence today. What is the process for filing for separation and divorce in Virginia and should there be a legal record of that? And if so, why is it not being presented here?

A. Sir, there is not a legal requirement for paperwork in Virginia. As long as one of the parties has the intent of divorcing, being separated, the -- and they don't live as a married couple, which [REDACTED] and I do not. When I visit my daughter, I stay in a hotel. There is no -- I don't sleep in the spare room, nothing like that. When I confessed everything to [REDACTED], that complicated the divorce process. So we have been going back and forth with divorce agreements, but we have yet to resolve the details of those, which is why you haven't been presented that.

Q. There is no documentation at all?

A. There is a contract with my lawyer, sir, and I have a number of draft back and forth divorce agreements.

Q. Why hasn't that been presented here?

A. I don't know why it hasn't been, sir. But if that is something that you would like to see, I can pull those.

Q. Okay. Did the psychologist at MARSOC diagnose you with PTSD and TBI? Could you explain the circumstances that caused those injuries just so I can better understand. You came forth and said that you are not claiming that as a defense in any way. I just want to understand, you know, the circumstances that caused those injuries.

A. Okay, sir. The TBI -- I don't really diagnose myself with TBI, but he said that I met criteria for screening. He has diagnosed me with PTSD and depression. The PTSD wasn't so much a specific incident but a series of events throughout 2003 to this past deployment. The biggest takeaway -- I am completely open to dive down even, sir, if you have following questions. But in Iraq in '03, you know, just exposure to mass amounts of death. I remember pulling in to Al Quot on the way to Anu Mania. I was with a wing communications squadron. We were right behind LAR in the stack, and they had just cleared an area of what I would estimate to be more than a battalion's worth of mechanized Iraqis. And we -- to drive through that area, we were swerving around a lot of dead bodies that were significantly destroyed from

munitions from that.

And then moving into, I guess, the SOTF deployments, being an approver for strikes. In that time frame, what we call now the engagement authority, it fell to the O-5 command. So [REDACTED] at the time, he delegated that to two individuals, [REDACTED] and me. So whenever you call for indirect fire or direct fire in the form of a hellfire missile, for example, would come back to our operations center.

There are a couple of calls that I made where -- it is remote warfare, but you are watching it. You are taking the shot. Just watching the affects of two guys planting an IED in the road getting vaporized by a hellfighter or approving close air support off a B-1 on a cave complex that you found out that there were enemy combatants but younger enemy combatants, that has really stuck with me particularly the younger enemy combatants.

You know, continuing on, I don't know why we do it. I guess maybe from the Vietnam days, but anytime you walk in an OP center or the SITREP goes out, the amount of enemy that had been killed to date, I have been on a number of deployments where that number has been in the thousands. You know, enemy as they are, that is, you know, a number that resonates with me pretty hard.

And then there is a portion of my career, sir -- I can't get into a lot of details, but, I guess -- manhunting. I mean, just hunting humans. They are enemies, and it adds a strange dynamic when you are watching people for days or months for that matter. And then the conditions are met to take them off the battlefield.

In this most recent deployment, we weren't in engagement authority at the Siege SOTF. But kind of like [REDACTED] mentioned, the crafting of the plans for removing ISIS from Iraq either through force or their surrender. We came up with a lot of those plans. And although they deserve everything they got, it is a lot of human beings that have been added to that EKIA count, you know. Again, in the thousands particularly after the battle of the Mosul, Tal Afar, Hawija, Al Qa'im [ph]. Does that answer your question, sir?

Q. It does. Just a couple more questions. So the testimony that we've heard today and that we've read in the records paints two different pictures of [REDACTED] in my mind. One picture paints -- one picture that's painted is a Marine that strikes while the air is hot. He's decisive; a man of strong

character; a man that gets things done; a man that can be trusted; a man that knows how to solve our problems; so that's one picture.

The other picture that has been presented is a man who, you know, despite knowing many, many years ago that he was probably in a marriage that shouldn't be in, failed to make any decisive action to end it, deceived those that he loved the most, deceived the organization that he proposed to love the most while being in a position of special trust and confidence. How am I to determine which one is the real [REDACTED], and if you're retained, how are you going to suppress that other one?

A. Sir, I'm not going to disagree with you there, the pictures that you painted. Professionally speaking, I've always done my job. I've done what's asked of me and always made sure that adjacent and subordinate units were always taken care of to the best of my ability.

My inaction, my misconduct, my bad decisions, the second portrayal -- I'm not making excuses, but I didn't want to -- as much as I knew the marriage was over -- I didn't want to hurt [REDACTED]. I didn't want to let my parents down. I do want to lose J. C. You know, what our relationship had was what I had been seeking in a marriage, and, like a lot of us do, when it comes time to do a work up or deploy you just, kind of, push everything else aside.

Like I mentioned, I planned to come clean with J. C. after I got back from Iraq and straighten everything out with [REDACTED], and I didn't, and I regret that. And I wish I could go back and fix that, and I've been held accountable for it and taken ownership of it. In terms of -- I think you phrased it: How to remediate it going forward, sir, is that correct?

Q. How are you going to suppress that other picture?

A. Suppress? Continue treatment and counseling, sir. I've been talking to [REDACTED]. There's been a lot of self reflection. Over this period, I've been disgusted with myself. I regret the hurt that I've caused people, and I wish I had an opportunity to make it right. Particularly, one day when after that conversation with my daughter. And this is going to continue, and I'm going to continue to carry this with me for years, this series of poor decisions.

Q. Okay. So you've been a company commander. Although you haven't been a battalion commander, you've been delegated strike authority as an XO so you understand the burden command.

A. Yes, sir.

Q. So I'm going to go back to my question that I asked [REDACTED]. Now I'm the O-6 commander of MARSOC charged with holding Marines accountable and enforcing good order and discipline. I haven't been a guy who has felt that burden of command. You know, if the decision is made to retain you, acknowledging that you've been held accountable in a lot of different ways, how would you explain that to the Marines?

A. I think every situation is unique, sir. And I don't say that trying to devalue my poor decisions, but I think there are things to be learned from every situation. I think, you know, as you mentioned, that I've mentioned, I've been held accountable, and I think that that level of continuity was appropriate. I deserved it. And communicating that to the Marines, if asked, open and honest, sir. I mean, it's here is what happened. As I've done with the individuals, I've asked for letters or witnesses or just felt that I owed the courtesy to explain why I wasn't taking over battalion command that I didn't ask for statements.

You know, having these conversations with subordinate Marines would be as tough as having them with my family. I had this conversation with my parents and my brothers. Those were some of the hardest conversations I had, and expect those to be equally hard, but I do think that there's valuable lessons to be learned from my mistakes. And I hope I have the opportunity to help some prevent from making mistakes like I have.

Q. Okay. Last question. Many of the character witnesses today that testified on your behalf testified that you can continue to provide value to Marines Corps. And several of them stated that you will never lead Marines again and that your role in life is going to be to row. Do you think that's a sufficient reason for the Marine Corps to retain you? And if not, what do you plan to do if you're retained to do more than just row because lots of people could just row?

A. Yes, sir. So I think -- as I understood their comments, it was placed in a billet of leadership. I think all Marine officers are leaders, whether you're a staff officer or a commander. I think I have proven that I can row pretty damn hard, but I also understand that we're all replaceable in the Marine Corps. All I can offer back is a level of effort and output, you know, even more that I've put in to this day because I have making up to do. I owe the Marine Corps a lot for what its given me over the past 21 years and, especially based on my misconduct, I owe the institution and I want to pay it back, sir.

MBR ([REDACTED]): Thank you. I have no more questions.

SMBR: [REDACTED]?

EXAMINATION BY THE BOARD

Questions by the member [REDACTED]:

Q. I have one question.

A. Yes, sir.

Q. Are there any records of the marriage counseling?

A. I'm sure that I can find them through Tricare, sir. I don't have them on hand though, sir.

Q. So was the counseling with a chaplain? Was it a therapist?

A. Both were therapist in town, sir -- local therapists off-base. And, you know, at the time I wanted it that way. I mean, as much as we all hate to admit, there a little bit of a stigma of -- particularly of a senior officer walking into, you know, a therapist's office. And so we opted to go out in town for both of the sessions with the therapists.

MBR [REDACTED]: Okay. Thanks.

MJ: I just have a few questions.

EXAMINATION BY THE BOARD

Questions by the senior member:

Q. So ironically, you and I have chewed some of the same dirt. So I was a company commander of Comms Squadron 38 and made the trip all the way up from Ali Al Salem to An Numaniyah, and we all went up there and you guys unbuttoned stuff off there. So I bring that up because -- and I know [REDACTED], but I bring that all up because as you've described, again, you came right out and said that you're not blaming the diagnosis here. But as you described that, it was all kind of like bloodbath. I've been a company commander in that. There's a whole lot more going on than just blood and death. There's the daily pressure?

A. Yes, sir.

Q. You know, those kind of things. So I'd like you to just comment on those who say that, "Wait a second there Lieutenant Colonel, this isn't all about the dramatic blood and death stuff. This is about a whole lot more." Folks can experience PTSD from a deployment and never have heard a shot, but the responsibilities and stuff

like that. So would you comment on that?

A. Yes, sir. I think, you know, what I liken that to is burnout to a degree. I think, as you know being a communications officer, the amount of pressure that put on you is a -- everything operationally especially while deployed. You're keeping those communication links up whether it's -- I'll get, kind of, comm air wing specific, but keeping nets up to the DASC or to the MTACs or whomever's controlling the air for the fight and making sure that there's links when as forward as -- far forward as possible and always stayed up. I mean, that's a tremendous amount of pressure.

You know, from that specific deployment, the -- you know making sure your Marines are safe and that they're doing the right thing to prevent them from putting themselves at risk, especially some comm Marines. With the equipment that they use and the voltage that goes through it and making sure that they're making sure they're taping their areas off and, you know, just supervising, you know, just leadership stuff. And then just moving through the career with the amount of hours and, you know, preparing for deployments whether at MARSOC or other units.

We're not preparing for deployments for that matter in deploying. We're just spending countless days on the road doing your job. In a deployed operational environment or a garrison environment, I think it all adds to that that I think you're referring to, sir. I think, you know -- I, for one, take personal accountability and responsibility if a unit doesn't have something that they need. So for example, when I was a regimental OpsO -- I'll leave locations out of the room, but -- we were pushing forces to somewhere in the Pacific, and there were things that they needed. And it was a daily fight to try to get that -- those resources for those units.

The stress of having those fights when something -- you know, as we perceived it in our unit is it seemed very clear and required, and trying to convince others that it was more of a priority than they were making or letting it be. And then kind of holding the water on that to go back to the commander and say, "Success," or "Failure," or, "Sir, I need you to get engaged on this." I hate doing that. I hate going to my boss and saying, "Sir, I need you to get engaged on this." If I can figure it out, it's my fault for not being able to figure it out. There's always a way. And that level of stress that I put on myself to accomplish that always, I think, has put a certain level of burnout on me.

At the same time though, it's things that most Marine officers do. You know, it's -- I don't think it's unique to me. I think, you know, a lot guys work hard. A lot of guys take on a lot of responsibility. I think the way we process it might be a little bit different though. But I think, you know, it's the stress of the responsibility. I'll go back to '03 with the convoy north that you were talking about, sir. I mean that was -- we had Colonel -- [REDACTED]. That -- it was my convoy. It was my 55 vehicles and 108 Marines listed in my BUCK right next to a 9 Line and a MIST, you know, just in case.

When -- I can't remember the name of the airfield that we stopped at. I can't remember the name of it. It was on the highway. I set up a hasty FARP. And we had a report that there was a Republican Guard tank division heading away, and there was nobody out in front of us. We were kind of the corner, so to speak, of the maneuver unit, and we're a comm squadron. We had soft skin vehicles. We had a couple of .50 cal's on trucks and maybe a handful of AT4s, but, I mean, you know, as a lieutenant, I'm responsible for, you know, all of these Marines.

We're underequipped and if this is an accurate report, you know, we're going to have to deal with that because we're Marines. And it's kind of jumping back to my lieutenant days, but, you know, the stress that you put on yourself as a leader to make sure those Marines are doing everything to the best of their ability, their fighting holes and setting up lanes of fire and avenues of approach that you would not know -- not as the tactical guy at that point, but tanks might come down and how to maybe canalize them and slow down and kind of hope for the best.

I was a lieutenant. I didn't know that there were bigger things out there, and, luckily, IRS saw them and blew them all up before they got to us. But going through those mental motions, you know, just, kind of, put myself in my Marine's shoes and making sure that I'm doing everything in my power to make sure that they've got everything they need or they're doing everything right, and, you know, staying up for days at a time to make sure that stuff's happening. So yeah, I do think that has a stress effect, sir.

- Q. Okay. So going forward, how you deal with that stuff regardless of what environment you're in is an important part of your path forward?
- A. Yes, sir.

Q. All right. So the next question that I've got is -- when did you -- kind of, to switch gears here, when you met Ms. Day in 2011, you stated that you were friends, and then it became emotional?

A. Yes, sir.

Q. At what point did it actually become adultery?

A. I think -- I believe -- to the best of my recollection, it was after I told [REDACTED] that I wanted to divorce her.

Q. So that was 2012?

A. Yes, sir.

Q. Okay.

A. We maintained a friendship for a little bit. We stopped talking for a while, months, and started talking again. You know, I -- yeah. Yes, sir.

Q. Okay. So follow on to that, was there -- if you can remember back then, was there any point after, kind of, that first time where you said to yourself, "Okay. These aren't Marine Corps values. I'm a guy who's in-charge of other Marines. I stand in front of them every day, and I tell them to follow Marine Corps core values. This was an aberration. I screwed up, but I'm not going to do it again"? Obviously, you did. You went on, but did you -- was there a moment where you stopped and, kind of, said, "Wait a second. The very stuff that I'm telling people as a leader that they should be doing, now I'm doing it"?

A. There was, sir. There was -- you know, [REDACTED] mentioned that there were a number of breaks. There, you know -- in hindsight as I look back, there were opportunities to be honest with J. C. about the poor decisions that I was making with her.

Q. But you get -- sorry to interrupt you. You, kind of, get the rational calculus here, right. So the human dynamic is, I did it once. There's possible recovery there. The more you get into it, the more of some cost you have.

A. Yes, sir.

Q. So you talk a lot about J. C. and not wanting to lose her in answering the questions. I'm talking about your position in front of junior Marines who you're telling to do -- to live a certain way, but you just violated that.

A. Yes, sir. And I, you know, failed those Marines by doing that. And, you know, I was wrong, and that's why when I was offered NJP, I accepted and pled guilty.

Q. But NJP was in 2018?

A. Yes, sir.

Q. In 2012, did you go through that process soon after you committed adultery? Do you recall?

A. I think in 2012, sir, at the end of the year, I think where my head was was that the marriage was on it's way out. And I convinced myself that although I didn't have a lot of support to end it, it was going to end. So I think that, you know, having that relationship with J. C. although I should've been honest with her at that point or before that point -- it was a -- it seemed not as bad, but I do acknowledge that it was wrong, sir.

SMBR: Okay. That's all I got.

Was there follow-up from either counsel?

CC: One moment, sir.

SMBR: Please do.

CC: Thank you, sir. We have no further questions.

SMBR: Okay.

Does the government?

REC: No questions, sir.

SMBR: Okay.

CC: Absent any additional questions from the board, sir --

SMBR: Yeah. Let's give -- do you want to give [REDACTED] another try here?

CC: I will, sir.

SMBR: Okay. Let's -- you're dismissed.

[The respondent was excused and returned to his seat at counsel's table.]

CC: No word on the cell phone, sir.

SMBR: Okay.

CC: I can call him and see if he answers.

SMBR: Please do.

REC: It might be a time to take a --

SMBR: Yeah. Let's go to recess for ten minutes.

REC: The time is 1415.

[The board of inquiry recessed at 1415, 23 August 2018.]

[The board of inquiry is called to order at 1423, 23 August 2018.]

SMBR: The board will come to order.

Please note the time.

AREC: It's 1423.

SMBR: So the witness, [REDACTED], he cannot -- he's not available, and so as I understand it, both the recorder and the respondent have come to an agreement on sharing a testimony or his testimony in summary as to what he would have talked about if he was here in person or over the phone; is that correct?

CC: Yes, sir.

AREC: That's correct, yes, sir.

SMBR: Okay. So you're free to share that testimony right now if you'd like.

CC: Thank you, sir. If I may?

SMBR: Please.

CC: So I'm just going to read off my notes from my interviews with him.

SMBR: Absolutely.

CC: Sir, as explained sufficiently by the colonel, [REDACTED] [REDACTED] is unavailable due to operational commitment to his current unit and unable to be reached by phone. He would have testified as follows:

In conjunction with his biography, he spoke to his background with regards to his experiences in the Marine Corps, you know, to build the foundation as it relates to his opinion as to Lieutenant Colonel -- potential service in the Marine Corps -- [REDACTED] potential service, and the 29 and a half years currently serving as chief of staff at JSOC as evident in his resume; he first came to know [REDACTED] when he was captain as the S-6, as comments or as you heard from some of the witness that have presented their testimony here today; hand-selected and

transitioned him to the XO billet during that deployment at battalion.

Over the course of their progress in time, they served on that deployment together; you know, he was aware that [REDACTED] went to JSOC afterwards and then he came back to MARSOC and served another time as an XO billet under [REDACTED] [ph], who [REDACTED] had the opportunity to supervise and observe through his performance as an XO at a battalion that needed some work, and he performed especially well during that timeframe, and inherited some material readiness issues. He would have spoke specifically to the tasks and performances that [REDACTED] [REDACTED] did in assisting with that battalion as the XO.

Their relationship continued over the course of [REDACTED] career; he hand-selected him; [REDACTED] would have testified that he hand-selected him to be his regimental S-3; he did an excellent job in the performance of his duties both pre-deployment as I mentioned during the opening statements and also during the 12-month deployment that [REDACTED] just spoke quite detailed about; he specifically remarked that his performance as the regimental OpsO was noteworthy; his military performance: Overall, he would have stated that it is evident in his record book that he is competitive to be a commanding officer and was selected and that should speak for itself with regards to his proficiency within his MOS.

He is fully aware having been involved in [REDACTED] [REDACTED] career since his time and arrival at MARSOC outside of their time in part at JSOC and command staff; he is aware of the allegations that are the subject of this hearing; he is specifically, intimately familiar with the details of adultery and conduct unbecoming an officer; he is aware that [REDACTED] [REDACTED] has accepted NJP and been subjected to a letter of reprimand and lost command as a result.

Having full knowledge of that and the adjudication rendered by General Mundy, he fully supports [REDACTED] [REDACTED] continued service, believes he should be retained, and would have made a recommendation in conjunction with the other character witnesses that presented testimony here today, and he believes he can continue to be a value of service to the United States Marine Corps, and fully supports his continued service, and would recommend that the Board consider retention.

As discussed, that is the anticipated testimony that

[REDACTED], had he been available to speak, would have provided to the court here today for you all's consideration, and we ask, as we've agreed amongst counsel, that you consider this stipulation of anticipated testimony as, in fact, if he were here to speak.

SMBR: And I will say, as the senior member, that two of the three board members know him personally, know his reputation and his professional character. So thank you for sharing that.

CC: Thank you, sir.

REC: And, sir, I'll just note for the record, the recorder agrees with that summation of the expected testimony of [REDACTED]

SMBR: Thank you very much.

Okay. So no further witnesses from counsel?

CC: No further witnesses. No further evidence, sir.

SMBR: Okay. Does the government have rebuttal evidence?

REC: No, sir.

SMBR: Okay. Does the respondent have any more evidence?

CC: No, sir.

SMBR: Do any members of the board want to recall witness, call an additional witness, or obtain any further evidence?

MBR ([REDACTED]): Now, I may have the one comment of the marriage counseling, but it doesn't sound like anything is on the record.

CC: Sir, they're hard to obtain. You know, you have his sworn testimony because when you attend joint counseling, sir, you have to get permission from both or the counsel will not release them. That's generally a privilege that exists amongst the medical community. They were in joint-marriage counseling. That's why, you know, [REDACTED] took the stand under oath to testify to that in sworn testimony.

MBR ([REDACTED]): All right. Thank you.

CC: Does that answer your question, sir?

MBR ([REDACTED]): Yes.

CC: Having that marriage certificate and divorce, sir, as he testified to, that you don't have a hard divorce decree yet. It's until it's finalized and then it's served from the country and the Commonwealth of Virginia. You know, as he testified to, he has an attorney working on that. It's just not finalized due to the prolonged separation initiated with [inaudible].

MBR [REDACTED]): Thank you.

SMBR: I have no further questions or requests for evidence.

Are both sides prepared for argument?

REC: The government is, sir.

CR: Yes, sir.

SMBR: Okay. The recorder may proceed.

REC: Thank you, sir.

Gentlemen, as it has been made clear over the course of today, the primary issue here is whether [REDACTED] [REDACTED] should be separated from the Marine Corps. As counsel for the respondent indicated in the opening, the basis really isn't the question here, isn't the issue, it's all about the question of separation or retention, should he be allowed to stay in? In reaching that decision, you need to evaluate all the evidence, both the mitigating evidence, extenuating evidence, as well as the aggravating evidence.

In their opening, the counsel for the respondent mentioned life circumstance. He mentioned some of these life circumstances were mitigated, not excuses, but mitigating. Specifically, they talked about the poor state of his marriage due largely to the prolonged geographic separation and the fact that they were both career-focused individuals. And you heard much of [REDACTED] testimony talked about this and some of the background of that.

But while much has been made of [REDACTED] refusal to leave her job and her refusal to move, the relationship involves two people equally accountable for the relationship's success or failure. And [REDACTED] described [REDACTED] as a problem solver. To solve this problem, the problem of their marriage, to solve the problem of that geographic separation that seemed to be, kind of, the root of the problems, there were other options.

██████████ talked about he could have and probably should have filed for divorce much sooner. They talked about it in 2012, and he admitted he should have done that at the time rather than continue delaying it. Or ██████████ could have left the Marine Corps and pursued another career in Richmond with his wife.

Now, neither of these option were appealing because, one, he didn't want to give up on his marriage so he didn't want to file for divorce. He also talked about he didn't want to let his family down and the upbringing that he had and the impact that that had on his decision making process, and he was a career-minded individual. He wanted to stay in the Marine Corps. He told you that he loves the Marine Corps and loves what he does. But regardless, the point is: There were viable options to solve the problems of the marriage sort of committing misconduct, and short of committing misconduct for six years.

Gentlemen, as you are well aware, officers are expected to manage such life circumstances in an appropriate manner. Now, does that mean we always get it right? No. But there is a big difference between not choosing the best solution or not choosing to get held and choosing to commit misconduct. And, specifically, choosing to continue to commit misconduct for six years.

Similarly, while his experience in special operations provides some evidence in mitigation -- again, not excuses and he fully owned that, that they were not excuses -- but it is evidence in mitigation, nonetheless, that should be considered by the board related to his PTSD and as ██████████ described it "remote warfare." It's also the source of some aggravating evidence that you should consider. Consider the way in which he abused his standing as a SOO, special operations officer.

As noted in the IG summaries of Ms. Day's complaint, ██████████ would tell her that he had special operations meetings, and that he could use that as a way to play off some of his aloofness with her and some of their meetings. And as General Mundy said, "He was using his status as a SOO as subterfuge to deceive his wife and Ms. Day." But most importantly, it's not the conduct expected of an officer, SOO or otherwise.

Now, additionally, you have read character statements, you've heard all of the witness testimony, you have reviewed the entire record of performance. The overall theme is exactly as ██████████ pointed out. He

performs well, that this seems to be an out of character incident, he has potential for future service, and he should be retained, and, ultimately, allowed to retire. But we would point out that his accomplishments over the last six years, as well as, his proximity to retirement are a double-edged sword. While they may be factors that support his retention, you should also consider that they occurred when his misconduct was unknown. Yes, [REDACTED] got to this point in his career by performing well, that's undisputed. You can look at his record.

But he also got here because he successfully hid the truth of his adulterous relationship. If his misconduct had been revealed five, four, three, or even two years ago, and it was [REDACTED] sitting at a BOI, his career track would look vastly different, and his proximity to retirement would have been a minimal factor.

In other words, while you have to consider the entire span of his career and his accomplishments throughout that career in deciding whether to recommend retention or separation, you should give appropriate weight to the last six years in light of the fact that he was maintaining an adulterous relationship unbeknownst to his coworkers, his chain of command, his wife, or Ms. Day. Had his misconduct been revealed at the outset of his relationship with Ms. Day in November or sometime in the fall of 2011, would he have been selected for and promoted to lieutenant colonel? Would he have been given the same billets and same responsibilities? Would he have been slated for command? Most likely not, but those things did happen because his misconduct remained hidden until Ms. Day contacted the MARSOC IG and made it known, and that happened in February of 2018.

So while his record is impressive and his selection for command are noteworthy, they must be balanced against the fact that the Marine Corps and his chain of command only knew half the story. Lieutenant Colonel Sectionboard [ph] didn't know of his adulterous relationship, neither did the command screening board, and neither did his reporting chain for the last six years. Gentlemen, you have that information however. You know the full story, and you must use all of that information in addition to your own experience and knowledge in forming the basis of your recommendations today.

Thank you.

SMBR: Does counsel for the respondent -- you may proceed.

CC: Yes, sir. May I enter, sir?

SMBR: You may.

CC: Gentlemen, when we began this morning we talked quite a bit about the potential for future service and [REDACTED] ability to continue to serve the United States Marine Corps. The notification documents provide your guidance as to what the allegations are that he has alleged to have committed and then admitted responsibility to. I would ask that you give the government's counsel -- their argument is a lion's share of hypotheticals. That's not the reality of the situation. The reality of the situation is: This officer sits here in front of you a lieutenant colonel in the United States Marine Corps having been subjected to NJP, facing whether he is going to be able to continue in his service.

The hypotheticals that they spoke to in their opening statement with regards to what does the Day family think, there's no evidence in front of you with regards to anything related to any type of adverse impact to the United States Marine Corps or their opinion if the clients participate. Additionally, any reference to, "Hey, if he had posed this information as a major, we may not be sitting here in the situation." None of that is the reality associated with the evidence that is in front of you. Yes, there was a prolonged relationship for which he is held accountable, but all of the things that they spoke to, none of it is concreted into evidence in front of you, which is why it is binding to your decision. So I wanted to start with that point because I believe it's appropriate to clarify what appropriate for you all to consider when evaluating the future service of this lieutenant colonel in the United States Marine Corps.

What you have here in front of you is a 40-year-old father of a young 10-month-old, who's spent about 22 years associated with the United States Marine Corps. He has made a mistake and has gave himself to your evaluation enough to take the stand. You all adseps, BOIs, you've seen court-martials [ph]. He has an absolute right not to face questions from government counsel, from the boards members, and he elected to do so. He sat here and he didn't deflect, he didn't waiver from his responsibility of his actions. And it goes back to [REDACTED] testimonies; three things: He's not morally bankrupt; he's truly remorseful; and he has paid the price.

He's been held accountable. You have the opportunity to

allow him to continue to serve the United States Marine Corps, which is an incredible power. You have the ability to not -- you know, we're talking about a senior officer with a wealth of information and training, and you have the opportunity to allow him to continue to serve in the same capacity he has for the last 22 years, 19 years towards retiring. It's powerful, but we gave you and we told you we would, during the beginning of this process, that we would make this decision easier for you.

The government said it was, you know, going to be difficult as it relates to the retention or separation question and to go back and review what they have provided to you. There's no one that has come in and said this officer needs to be separated. There's no one that has come in to say this sets a negative impact to good order and discipline. There's no one that has come in for the government and to the stand to say he's not helping the mission, or we've pulled all of his clearances. He is not deployable in the future. That was their burden to establish as this is a retention role. We're not fighting what happened, this is about future service.

All they've said is, "Here's the investigation that General Mundy had at his discretion that he evaluated, and he chose to adjudicate it at Article 15, at NJP." You've had -- have command. Minor allegations are adjudicated at Article 15. It's in the M.C.M. It's minor allegations. So if you've reviewed about everything that has been presented by the government and elected to move forward, it's with an Article 15 or a letter of reprimand.

Now, boards of inquiry and SECNAV Instructions control the regulations related to this retention board and future service. One of the things that you can consider is whether he has the capability to continue to be an asset in the United States Marine Corps. So to help you reach that, which is what we told you we were going to ask you to determine, is whether he should continue to serve. We provided several character statements, and you all have read them. I will paraphrase. [REDACTED], at 25 years in the service, "Expressed remorse for his actions, and should absolutely be able to continue to serve. He can continue to render honorable service." [REDACTED], who you heard from, again, echoed his statement in a very positive direction related to his opinion that is to let him to continue future service.

[REDACTED], he's known [REDACTED]

since 2008. His name was mentioned here today, ironclad professional. He's asked for forgiveness and has the ability to continue to serve. [REDACTED]

[REDACTED]. Same testimony. He should be retained. [REDACTED], "Known him for the last seven years. You know, focus on the Marines he's set to lead because it's the right thing. He can learn from this and continue to move on."

Again, the [REDACTED] and [REDACTED] and all of them. [REDACTED], you know, he has a fantastic conclusion. You know, when you read through his statement, read how powerful his opinion is about his continued service. All of these folks echo what the witnesses came in here today saying. A lot of this -- all of them within their statements, to include

[REDACTED] and [REDACTED]. Folks within the Army, you know, a sergeant major and major, he served with them at the -- in Fort Bragg.

All of these folks are aware of the allegations, and it's important to know that. They put that in their statements. They placed that in their testimony, and they believe he can learn from that and move forward in a positive direction and has continued value to add to the United States Marine Corps. And that's what we've tried to put in front of you, a collection of individuals from very different commands that he's served with, officer and enlisted, to give you a total perspective of this officer. He has made some personal discretions in his private life. He has made some mistakes and had his misconduct. You know this is a lapse in judgment occurring at one period of time.

To quote [REDACTED], "He has paid the price. He has been held accountable." All of the witnesses have echoed that. If you go back and if you recall [REDACTED], same thing. He has learned from this process. He has paid the price and can continue to row at whatever level he's asked and as a staff officer or in a position of leadership, and can continue to be an asset to the United States Marine Corps.

Going to [REDACTED], he made the same general comments with regards to, "I still seek him out." You know, that's the type of testimony you get. "I know what happened and I still seek him out for guidance and advice as an intelligence officer slated for command." This is the caliber of the officer that you have the ability to allow to continue to work towards MARSOC's operational lethality, and as you heard from some of the witnesses that spoke here today.

He's deeply entrenched, and, speaking specifically to [REDACTED] and [REDACTED], he is -- you know, and everyone is replaceable, but he was the pointman for many of these initiatives. Right now, currently under place was the the 20/30 initiative for some of the issues that they spoke to about the future of MARSOC. Both of those fine officers said he's the go-to guy.

I think it was the quote from [REDACTED], "And he's the pointman," As well as the quote from [REDACTED]: "So this is not somebody despite having legal looming, despite having, you know, given up command, who has quit -- who's quit and dropped their pack," for lack of a better way to put it, and tail-in-hand and tried to go home. In fact, he's done what he's done his entire career.

He's thrown himself into his work. He's burned a candle at both ends working 20-hour days trying to help move the mission forward for the unit that he's going to be attached to. Now, that's his MO. That's how he's always been: That's how he'll always be if afforded the opportunity to continue to serve.

Lieutenant Colonel -- well, [REDACTED] and [REDACTED] echoed that same work ethic. They've seen it throughout his career. Both of these officers having known him since 2008 when they arrived at MARSOC and he arrived as a CommO and progressed to somebody who was slated for command. You've got the professional accomplishments. You've got the master brief sheet. You've got the opportunity to read his awards, his fitness reports, and the 25 character statements. he doesn't even -- you know, what was interesting -- and I think it was [REDACTED] that said, you know, "This guy's a humble guy. He's a humble guy. He's not out chasing ribbons. He's not out chasing awards. He's not out chasing anything except to do his job."

Kind of fits into the guy who just, "I'm working up, doing my job, and deploying. I'm going, I'm going, I'm going. I'm not happy with my marriage, but I don't want more conflict. And again, I'm not making excuses, but do I don't want more conflict when I come home. He handled it in the wrong way. He gets that. He handled it the wrong way. But look at his personality. Look at his temperament. Look at his demeanor. And, really, take a look at your notes and how [REDACTED] described him. He is a humble, humble guy.

And then read his mom's statement. "We didn't even know he had a bronze star. We didn't know he had a second."

You know, "We learned about those things well after the fact from all of his friends from home. This isn't the braggadocious guy, "I'm going to go out and have an affair because I can have an affair. I'm an operator in MARSOC. This is -- I'm awesome." That's not him. That's not him. He's -- all of these things that happened in his life are incredibly personal, and he got away from it.

You have to take your experiences with the LDO who slept with the Marine in his unit's wife and compare it to what you've heard about [REDACTED] and his personal situation but more so his personal character. Again, not all gallivanting at the bar trying to find the next woman to swop; not a serial adulterer as you see in a lot of these circumstances. Again, not making excuses guys; putting into context, gentlemen, that the hope that you can see his potential for future service because it's isolated over a period of a long time, but it's isolated and there is some mitigating factors.

The government wants you to think this guy should have just left the Marine Corps. It's a bit extreme to see. There is no way a lieutenant is going to do that. He simply asked that his wife consider relocating from her job trying to get a job at one of the other news agencies down there so they could cohabitate and work on their estranged relationship. She is not willing to do that. He was not willing to do that. He was going to go, as you all knew and you heard [REDACTED] speak, where the Marine Corps tells him to go always first and foremost. He is packed and ready to go.

She was unwilling to leave a job that she could have very easily moved at her choice to a different location, and that put a strong strain on the relationship. It put a strong strain on the marriage. It put a strong strain on him emotionally. And he talked to you about it, and that's really the important part here: is he sat here and he fielded questions, very difficult question from the entire panel of board members about that lapse, about that indiscretion, about that deception, you know, about how is it going -- how can he lead, how can he get in front of Marines you gave these liberty briefs.

I asked him these same questions. You stood in front of Marines as an XO, and you gave a liberty brief, you gave a safety brief. You know, I dug in with this officer and asked those same questions and it's, "I want to know how can I help you stay?" You know, "How can you deal with this in the future?" Because I've seen the promise in talking with him and seeing the remorse in what

happened with him, and I've seen , you know, the sadness in his face, you know, because he knows he is devastated, and I think he said it best when said, "I'm embarrassed. I'm ashamed. I'm humiliated. My conduct was despicable." Now, despite [REDACTED] [REDACTED] strong opinion on adultery, he is still here today, and I think that is very telling, you know, as to his potential for future service, and the Marines who support him strong belief in his future service.

[REDACTED] has his fault as we all do. A true test of a man, as Sergeant Major said, is how they recover after they've seen their worst day and have been placed through the worst obstacle in front of them. And Sergeant Major came down here to speak with his institution officers; 1986 this guy was in the Marine Corps; 1986, we were talking, you know, and leading up to this and he still has got Vietnam vets that are his senior leadership when he comes in, and here is a guy who took time to come down and explain to you that this is a young kid who came into the Marine Corps that has never lost his desire to be a Marine, and he never has, gentleman, you just control his ability to continue. You control his ability to continue.

He sacrificed times away from his wife and his family and people he cared about too many times to count. Some units we can talk about and some units we can't. He went through and as painful as it may have been, you know, for him to go through some of the things that he has been through -- we're with you, sir -- you know, I don't know if anybody has testified or spoke. It's hard to get up here and say, "I'm completely vulnerable." Like, "I'm at your mercy." You know, "Judge me because I have faulted." And I have had the opportunity to talk with him at that level, and he gave you all the opportunity to as well, and that's telling, and it's important. And I feel as though this is somebody that should be afforded the opportunity. And it's not just me because I have gotten to know and seen, you know, his ability.

It's the folks that have come out here and are taking time away from their duties who echo that, to include [REDACTED]. He's has asked for forgiveness, and he has been held accountable, and I think -- [REDACTED], I didn't know he was going to go down those three bullets. When we had talked, he never mentioned it. I'm going to reuse them because I think they were fantastic points when you evaluate the deceptions of prolonged period of the relationship, and to balance that against the fact that it associates with marriage, his happiness, his operational commitments

this is a unique example, gentlemen.

You know, this is not your typical, you know, adultery case and your typical marriage. There is a lot of different things in this case that make it unique. The one thing that is not -- or that is completely unique to him as well is his overwhelming support from the folks that have come in here. And [REDACTED] said, "Why do you trust him?" Right, and I think you asked very similar questions, gentlemen from the panel, I asked him the same thing, you know, "How is the Marine Corps going to trust you?" And I think that [REDACTED] point was spot on; he is not morally bankrupt. You know, that was his first point. He absolutely has been able to keep his chin up, but not morally bankrupt.

He is truly remorseful and is genuine. You know, think about what [REDACTED] has spoke to and having to go to [REDACTED] -- his peers.

[REDACTED] and [REDACTED] that are now taking command in the XO billets. [REDACTED], the Sergeant Major, the mentors, and coaches; 25 folks; the family. He has been remorseful, and single one of those -- read through all of the statements. He knows, and even then -- and he acknowledges it, but he is truly remorseful and I think [REDACTED] point on that is move.

Finally, it's the accountably price, you know, what price at what level. NJP and command loss is what he focused on, and that is where we stand. I think the folks spoke to the potential for future leadership may not be there, and we are not naïve to that, but the potential for future valuable service is there overwhelmingly. All of you, gentlemen, have to balance the allegation being adjudicated with NJP, his testimony here today, opening himself up to the questions across the board. The passion relates to what he has learned and what he can do, what type of example this sets. His response is very genuine and sincere. He was humbled, embarrassed, and ashamed. Those are the three things he said to you to finish his testimony, but he wants something more than the opportunity to continue to serve.

Sergeant Major said, "how does somebody rebound this allegation of character?" We heard from folks that he has not lost his clearance. He has not lost special trust and confidence in his ability to do his job at MARSOC. In fact, he has been challenged with being the point-man on many of the things that I mentioned earlier with regards to the progression of MARSOC in the future.

The command's actions reflect trust and confidence in his ability to continue with the mission. Separation at 18 and half years is just not appropriate, gentlemen, in this case based on what has been presented here. What you have learned about [REDACTED], he has told you he has paid, the self reflection he has gone through, professional embarrassment, and most importantly his desire to continue to serve. It is all he has right now. It is all he has and all he wants. And as he told you, it is not to get to 20. It is to go as long as he is told to go. It is to do whatever the Marine Corps tells him to do for as long as he is possibly able to do so. He has pressed and will continue to do so.

He has been held accountable. You hold his whole future in your hands. We have given you an overwhelming amount of folks that make that difficult decision easier. I don't envy your positions as colonels because it is hard to judge and evaluate his facts and evidence. We have tried to make it easier by giving you so many stories.

[REDACTED] at 29, [REDACTED] over 20, to the sergeant major. Here is the good in the individual despite the bad circumstances that have invited us to meet each other. And we are going to go through this day arguing that here is the issue; it didn't happen; it was not this. It is about whether you give him the opportunity to continue based on everything that you have heard here to include his testimony.

We ask that when you go back into your deliberation process, that you review all the things. And I know that you -- as it relates to -- it has been presented here on his potential future service, and you retain him. You retain him for the 25 folks that have asked that, the witnesses that have taken the time to come down here that have over 100 years of experience collectively amongst them. And that you forward [REDACTED], as he stated, that he still has work to do. He wants to do it. Let him do it, please, for all those folks that support it. Thank you, gentlemen.

SMBR: Does the recorder have any final argument?

REC: Briefly, sir. Sir, I would just like to address a couple of things. The counsel for the respondent just talked about that there was sacrifice, time away from his family. If you look at one of the e-mails that he sent, dated November, 9, 2017 -- so this was shortly after his daughter was born that he sends this to J. C., "As I sit here thinking about how thankful I am that we

were able to spend so much quality time together the past few weeks." So when he actually is available and has the opportunity to spend time with his pregnant wife, he is spending time with Ms. Day. We have talked about adultery, and we have talked about [REDACTED] and his opinion. [REDACTED]

[REDACTED] also talked about each case as unique, and this case is unique, right? It is not a one night stand. It wasn't one incident or one-night-of-bad-judgment-type of adultery. It wasn't a short-lived romance even over a couple months. It was a six-year relationship that started less than two years after he got married. It was six years of deceit.

Counsel for the respondent is right. He is not a serial adulterer, but he is a chronic adulterer. He talked about he is being remorseful and that he has taken responsibility. That is true but now that the misconduct is out in the open. He took responsibility in some ways. He accepted NJP, he made a statement, he testified here today under in front of you. These are all things that he didn't have to do. So in that sense, he has taken some responsibility. He didn't take responsibility for the six years before the misconduct came to light. There were also some inconsistencies with his statement and his testimony. I highlighted two of them. We talked about when did the process stop.

He said, "I stopped the process after I realized the divorce could not be finalized." But if you go back through and you look at the timeline, he learned of his wife's pregnancy at some time in April of 2017. But after that, June of 2017, he reestablishes contact with Ms. Day. In 20 July 2017, he provides her a ring. They begin planning for marriage. In summer of 2017, they start signing rental agreements.

As late as 25 January of 2018, he is writing a check to pay for the cabin where they are going to get married. In 2 February, he gets an e-mail for J. C. saying, "Hey. There is some information on that check that is wrong." So at least as of 2 February, she thought that the process was still ongoing. So when did the process stop? When did he actually stop the process? He talks about his rental agreements in his statement. He said, "The rental agreements that I entered into in the summer of 2017 were done fully expecting that my marriage was going to be dissolved." But, again, he knew as of April 2017, that his wife was pregnant -- that that would adjust the date in which they could be separated and divorced.

And, lastly, gentlemen, counsel for the respondent said

that it is easy -- that the decision is easy. It is only easy if you discount the misconduct. It is only easy if an officer's behavior outside of work doesn't matter. Because if all you look at in this case is [REDACTED] performance at work, absolutely, it is an easy choice. But that is not the case in the Marine Corps. And in this case, there is a stark dichotomy between the professional and the personal. We often talk about the whole Marine concept. We talk about being Marines 24/7, and we preach this to our Marines whether you are in a slated command position or whether you are in a section leadership. Any time that we talk to Marines. Maybe this is just Marine Corps propaganda. Maybe these are soundbytes that we use to try to instill good order and discipline. But if they actually mean anything, if those words mean something and we expect them to mean something to our Marines, then it is something that has to be reconciled with the facts of this case. Thank you.

SMBR: Does either side have anything further to present?

REC: Recorder does not.

CC: No, sir.

SMBR: The board will make the following determinations by majority vote based on the preponderance of evidence presented at the hearing. If the board finds that the evidence does not substantiate the allegations, the board will recommend that the case be closed. If the board finds that the evidence substantiates the allegations, the board will make one of two recommendations: It will recommend that the respondent, notwithstanding the substantiated allegations be retained and that the case be closed; or it will recommend that the respondent be separated. If the board recommends separation, it must recommend characterization. If the basis for separation is substandard performance, the characterization must be honorable. If the basis includes misconduct or moral or professional dereliction, the board may recommend honorable, general, or other than honorable characterization.

During deliberation, the board will review the guidance in SECNAV Instruction 1920.6C on determining retention and characterization. Board deliberations include full and free discussion of all matters presented for the board's consideration. The board will decide its findings and recommendations by majority vote. The senior member will record the findings and recommendations on each of the findings and

recommendations worksheets by placing his initial in the blank beside any finding or recommendation decided by majority vote. Instructions are at the top of the worksheets. I have the original worksheets.

Does either side have any objection to these worksheets?

REC: No, sir.

CC: No, sir.

SMBR: Okay. Does either side have any questions or anything further?

REC: No, sir.

CC: No, sir.

SMBR: The board is closed for deliberation.

[The board of inquiry closed at 1500, 23 August 2018.]

[The board of inquiry opened at 1724, 23 August 2018.]

SMBR: The board will come to order.

Please note the time.

REC: It's 1724 on 23 August 2018.

SMBR: Okay. In order to resolve the matter at hand procedurally, I would call on the the government to please present the issue.

REC: Yes, sir. After the board closed for deliberations, the members requested the legal advisor, that contact information was provided, they called the legal advisor, and asked their questions, and this was done outside the presence of the parties. Upon further review of the SECNAV instruction, in light of its guidance that the legal advisor shall not participate in closed sessions of the board, the parties reapproached the members, expressed their concerns, and obtained clarification as to what the questions were and the guidance that was given.

The initial question was pertaining to the characterization of service and how expansive or limited the members could be with that, particularly as it pertained to misconduct and whether they were required to give an other than honorable or whether they had a pretty expansive range to consider all the different characterizations. The guidance on that one was that they are to consider the evidence and that they are to

consider all of the possible characterizations of service based on evidence that was presented to the board.

The second question was pertaining to the board's recommendation as moving forward and the binding nature of those or lack thereof on SECNAV and what can SECNAV do in light of the court's recommendations. The guidance on that was that SECNAV can do no worse than what is recommended by the board, but could, for example, if the board recommended separation with an other-than-honorable, SECNAV could either recommend retention or recommend the characterization be something more favorable.

That's the recorder's understanding of the questions that were asked and the advice that was given.

SMBR: Okay. Does counsel agree or have anything to add?

CC: We do, sir. And the questions were generally procedural as to whether you could -- what steps you could take at each, separate or retain, what evidence you could consider at each step, and should you move to separation, what type of limitations there were with regards to discharge and characterization and what binding impact that that had. So the nature of the questions were all procedure.

SMBR: I would affirm that.

Is there anything else on this issue that needs to be discussed before we move on?

REC: No, sir.

SMBR: Okay.

CC: Concur, sir.

SMBR: Okay. Great. I will announce the findings and recommendations of the board by reading from the worksheet. The worksheet will be made an enclosure to the board's report.

The board has no minority report.

By a preponderance of evidence, this board of inquiry finds that [REDACTED], under Paragraph 1(a) of Enclosure 3 of SECNAV Instruction 1920.6c, has demonstrated substandard performance of duty by failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade.

Under Paragraph 1b of Enclosure 3 to SECNAV 1920.6c, [REDACTED] has committed acts of misconduct, moral or professional dereliction of duty by commission of a military or civilian offense which could be punished by confinement of six months or more and any other misconduct that would require specific intent for conviction including any of the following: conduct unbecoming an officer and gentlemen in violation of Article 133 UCMJ; adultery in violation of Article 134 UCMJ.

Based on the above findings the following recommendation of the board of inquiry are made:

By a majority vote, the board of inquiry recommends that [REDACTED], USMC, be separated from the naval service for the reasons listed above. The board of inquiry further recommends that [REDACTED] service be characterized as honorable.

And as stated, there is no minority report.

Does anyone have any other business to bring before the board?

TC: No, sir.

DC: No, sir.

MJ: Okay. The board is adjourned.

[The board of inquiry adjourned at 1728, 23 August 2018.]

[END OF PAGE]

**BOARD OF INQUIRY AUTHENTICATION
IN THE CASE OF**

[REDACTED], U.S. Marine Corps
3d Marine Raider Battalion, Marine Raider Regiment
U.S. Marine Corps Forces Special Operations Command
Camp Lejeune, North Carolina

Recorder Certification

I have examined the board of inquiry in these proceedings and caused those changes to be made which are necessary to report the proceedings accurately; and

I have made a copy of the board of inquiry in these proceedings available to, [REDACTED] counsel for the respondent.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] _____
nant, U.S. Marine Corps
28 Sept 18
Date

Senior Member Authentication

I have authenticated the transcript in these proceedings.

[REDACTED]
[REDACTED]
[REDACTED] _____
Date